DOCUMENT RESUME

ED 261 916 SO 016 214

AUTHOR Reynolds, Ernest, III, Ed.; And Others
TITLE Of Counsel to Classrooms: A Resource Guide to Assist Attorneys and Teachers in Law Focused Education.
INSTITUTION Texas Young Lawyers Association, Austin.
SPONS AGENCY Texas Bar Foundation, Austin.
PUB DATE 84
NOTE 151p.
AVAILABLE FROM Texas Young Lawyers Association, P.O. Box 12487, Austin, TX 78711 ($4.00).
PUB TYPE Guides - Classroom Use - Guides (For Teachers) (052)

EDRS PRICE MF01/PC07 Plus Postage.
DESCRIPTORS Citizenship Education; Community Resources; *Constitutional Law; Consumer Education; Curriculum Guides; Human Resources; Instructional Materials; Lawyers; Learning Activities; *Legal Education; Legal Problems; Secondary Education; *State Courts; *State Legislation
IDENTIFIERS *Law Related Education; *Texas

ABSTRACT

A secondary curriculum for teaching about Texas law is designed for use by both teachers and visiting resource persons. Introductory materials include a preface, acknowledgements, an introduction, and practical suggestions for visiting speakers. The main body of the publication contains nine units of material on the following topics: Texas courts, Texas Bill of Rights, the Texas legislature, the Texas Constitution, women and credit, consumer law, landlord-tenant relations, drug abuse, and alcohol abuse. Each unit contains materials for the resource person, including a rationale, goals, lesson starters, and background notes; also teacher materials, including objectives, infusion suggestions, supplementary materials, discussion topics, student activities, vocabulary, and a bibliography. A directory of law-related education projects and a number of strategies for law-related education conclude the document. (LP)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED261916

OF COUNSEL TO CLASSROOMS:

A RESOURCE GUIDE TO ASSIST ATTORNEYS AND TEACHERS IN LAW FOCUSED EDUCATION

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

- [x] This document has been reproduced as received from the person or organization originating it.
- [ ] Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Hope Lochridge

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

SO 016 214

OF COUNSEL TO CLASSROOMS:

A RESOURCE GUIDE TO ASSIST ATTORNEYS AND TEACHERS IN LAW FOCUSED EDUCATION

PREPARED BY

TEXAS YOUNG LAWYERS ASSOCIATION
LAW FOCUSED EDUCATION COMMITTEE
(1983-84)

FUNDED BY
TEXAS BAR FOUNDATION

TEXAS YOUNG LAWYERS ASSOCIATION

Jo Ben Whittenburg, President

General Editor: Ernest (Skip) Reynolds III
Associate Editor: Charles E. Hampton
Managing Editor: Hope Lochridge

Prepared By:
Law Focused Education Committee
Ernest (Skip) Reynolds III
Chairperson

George A. Almaraz, Edinburg
Richard Bentley, Abilene
J. Michael Bradford, Beaumont
*Karen Buckman, Beaumont
Tom Carr, Fort Worth
Stanley E. Crawford, Jr., San Antonio
Harrell L. Davis, III, El Paso
David H. Donaldson, Jr., Austin
Jorge A. Gutierrez, Austin
Charles E. Hampton, Austin
Ruth L. Harris, Beaumont
David W. Ledyard, Beaumont
*Dr. Janice May, Austin
*Professor Michael Rosenthal, Austin
*Jan K. Smith, Edinburg
Richard C. Smith, Edinburg
*Lanette Sullivan, Karnack
*Elvin E. Tyrone, Austin

Staff Liason: Hope Lochridge, Austin

Executive Committee Advisor: Jo Ben Whittenburg, Beaumont

* denotes public member

©1984 Texas Young Lawyers Association
Austin, Texas 78711

All rights reserved. Permission is hereby granted for the copying of any part of this book by a photocopy or other similar process or by manual transcription, by or under the direction of licensed attorneys for use in educating the public about the law. So long as these materials are used for non-profit activities and appropriate credit is given to the Texas Young Lawyers Association for preparation of the materials, any user of these materisl is given blanket authorization and encouragement to freely duplicate, disseminate and use the materials in this book.

TABLE OF CONTENTS

		PAGE
Preface		1
Acknowledgements		2
Introduction: What; Why; How To Use		3
Practical Suggestions for Visiting Speakers - Do's and Don'ts: Tips on How To Communicate Effectively		6
Unit I.	The Texas Constitution prepared by Ernest (Skip) Reynolds III	7
Unit II.	The Texas Bill of Rights prepared by Ernest (Skip) Reynolds III	21
Unit III.	The Texas Legislature prepared by Ruth L. Harris and David W. Ledyard	33
Unit IV.	The Courts of Texas prepared by Tom Carr, Charles E. Hampton, and Dr. Janice May	45
Unit V.	Women and Credit - Their Rights and Responsibilities prepared by Ruth L. Harris	61
Unit VI.	Consumer Law - Texas Deceptive Trade Practices Act prepared by Stanley E. Crawford, Jr. and Harrel L. Davis, III	73
Unit VII.	Consumer Law - Landlord and Tenant prepared by David H. Donaldson	87
Unit VIII.	Drug Abuse prepared by Charles E. Hampton and Professor Michael Rosenthal	97
Unit IX.	Alcohol Abuse prepared by J. Michael Bradford	117
Directory of Law-Related Education Projects		131
Appendix:	Handbook of Strategies for Law-Focused Education	133

Texas Young Lawyers Association

Office of the President

OFFICERS

President
Jo Ben Whittenburg, Beaumont

Chairman of the Board
John M. Joseph, Austin

Vice President
David R. Soldier, Aransas Pass

Secretary
Kenneth C. Raney, Jr., Dallas

Treasurer
Thomas C. Riney, Amarillo

President-Elect
Barry Roberts, Austin

Immediate Past President
Bill Whitehurst, Austin

DIRECTORS

David Almaraz, Laredo
Ewell Benton, Houston
Gerald L. Brecht, Houston
Michael J. Canon, Huntsville
William Frank Carroll, Dallas
Charlie Dunn, Lubbock
J. Keaton Grubbs, Wichita Falls
Alan Harrel, Texarkana
Richard Harrison, Sherman
James A. Hime, Houston
Alex Huddleston, Harlingen
Mark Jaynes, Waco
Ralph C. Jones, Dallas
Charles M. Jordan, Galveston
William T. Kaufman, San Antonio
Andrew L. Kerr, Midland
Sydney M. Leach, Houston
Sheila Jackson Lee, Houston
Arch C. McColl, III, Dallas
Michael A. McConnell, Fort Worth
James A. Moseley, Odessa
Elizabeth C. Pettit, Beaumont
Bert W. Pluymen, Austin
Gary Reaves, El Paso
Pam Reed, Austin
Thomas C. Riney, Amarillo
W. Stephen Rodgers, Bryan
David R. Soldier, Aransas Pass
Jane Ann Varner, Abilene
Robert A. Watson, Waco
D. Hull Youngblood, Jr., San Antonio

STAFF EXECUTIVE ASSISTANT

Joy Moore
P.O. Box 12487
Austin, Texas 78711
512/475-3715

FOREWORD

The Texas Young Lawyers Association has a proud and proven history of service to the public and to the profession. Over the past decade, our projects and activities have consistently received recognition by the American Bar Association as the best in the nation. This manual, "Of Counsel to Classrooms", follows in that tradition.

"Of Counsel to Classrooms" is a guide for lawyers and teachers, and contains planning and instructional materials suitable for use in one-hour class periods. The subjects covered in the manual represent the topics on which lawyers are called upon most frequently to make presentations, and these subjects have been correlated with existing educational materials available from the Texas Young Lawyers Association and the State Bar of Texas.

In preparing the guide, Chairman Ernest Reynolds III of Abilene, a former teacher, solicited input from attorneys, classroom teachers, law professors and vocational counselors in assessing the needs of the lawyers, teachers and students targeted by the project. The guide contains curriculum materials to be used in the classroom and in follow-up activities, as well as an easy reference to both substantive material and methodology for lawyers.

Texas young lawyers have always given generously of their time and talents to serve the public, as well as their common interests. This manual, "Of Counsel to Classrooms" is dedicated to the young lawyers and public members of the committee who volunteered their time and expertise to develop this classroom resource guide for use by lawyers and teachers.

Jo Ben Whittenburg
Jo Ben Whittenburg
President

BEST COPY AVAILABLE

ACKNOWLEDGMENTS

During the 1983-1984 program year, as the Law Focused Education Committee worked on the preparation of this book, the committee received invaluable assistance from numerous sources. This is an attempt to acknowledge that assistance.

Jo Ben Whittenburg of Beaumont, the President of the Texas Young Lawyers Association, actually conceived the idea from which this project grew. During the entire time that the committee was working, Mr. Whittenburg sustained the committee with his personal support and leadership, even serving as the executive committee advisor. He was constantly sending information, ideas, and various types of published materials to the committee. This was especially helpful in the early months as the committee was attempting to structure its approach and format for the project.

In the early stages of this project the committee received valuable assistance from the American Bar Association and from other state bar groups. The committee received and reviewed various types of books and other printed materials from these organizations and also from Phi Alpha Delta.

Throughout the 1983-1984 project year all of the members of this committee worked tirelessly, but special thanks must be given to the public members. These members assisted in all phases of this project, including the phase which involved the actual research and writing of the various topic packets (units). They are Karen Buckman (Beaumont), Dr. Janice May (Austin), Professor Michael Rosenthal (Austin), Mrs. Jan K. Smith (Edinburg), Mrs. Lanette Sullivan (Karnack), and Mr. Elvin E. Tyrone (Austin).

The excellent staff of the State Bar of Texas was always there to assist the committee when needed. The highly professional assistance of this fine group greatly aided the committee, and improved and polished the work product of the committee in countless ways. Special thanks are in order to Ms. Hope Lochridge.

Special thanks are also due to Mrs. Barthlow and Mrs. Shaw, members of the staff of the McMahon Law Firm of Abilene, Texas, for their tireless assistance.

So many people and organizations have helped in so many ways that it simply is not possible to even begin to properly and completely acknowledge all the assistance that the committee has received. However, as a closing acknowledgment in this connection, the committee desires to express its wholehearted and complete appreciation to all who have assisted it during its 1983-1984 program year.

INTRODUCTION: WHAT; WHY; HOW TO USE

What: The objective of the TYLA Law Focused Education Committee during the 1983-1984 program year has been: "To develop a curriculum for legal education of high school and junior high students." This book is that curriculum. It is not exhaustive. It does not cover every topic of potential interest. Instead, it is something of a pioneer effort. It must be noted that, at least from the point of view of a professional educator, the term "curriculum" is used here rather loosely. The "curriculum" contained in this book is not the type that educators would develop for any individual course of study. Instead, this "curriculum" is a collection of materials dealing with various topics, each of which is law-related. Law is a broad subject. It obviously was not possible for this committee to prepare an exhaustive curriculum for law-related education during the course of the 1983-1984 program year. During previous years various committees of the State Bar of Texas and the TYLA had prepared booklets, pamphlets, and films dealing with a number of legal or law-related topics. Building upon that foundation, this committee selected several of those topics. Various members of the committee accepted responsibility for developing those topics into the topic packets (units) found in this book.

WHY: Our nation and the various states which comprise it enjoy what we refer to as a democratic form of government. Philosophers and commentators on government have recognized from ancient times that democratic institutions cannot survive in a society that does not have a well-educated citizenry.

In the United States, and in Texas, our democratic institutions are strong and vibrant. However, if they are to survive and to retain this strength and vitality it is important for each succeeding generation to be well-educated.

Our system stresses the fundamental importance of the concept of government "of laws and not of men". If laws are regularly made through established and generally respected institutional procedures, and if those laws are followed and made applicable to all persons in society, even leaders at the very highest levels, then the system of government will be most likely to work fairly and to the benefit of all citizens. The laws will not become the arbitrary expression of some select individual or group of individuals.

Since the concept of a government "of laws and not of men" is important in our particular democratic type of government, it becomes important for our citizens to be educated not only to understand in a general way how government works, how to vote and how to participate, but citizens need also to be given some real understanding of laws and the legal system.

In our contemporary society various groups possess specialized skills and education. For example, doctors are the group that specialize in healing. Lawyers are the group that specialize by learning about law and the legal system. It is recognized that this specialization has significant relation to

the fact that lawyers, as a group in society, are disproportionately represented in government. Likewise, possession of this specialized knowledge about laws and the legal system should enable lawyers, as a group of citizens, to help educate other citizens, including students in high school and junior high school, about laws and the legal system.

This book was created and exists as a tool to assist lawyers in educating the public.

HOW TO USE: These materials are prepared for use by local bar groups, including both senior bar and TYLA local affiliate groups, in connection with speaker bureau committees or programs set up to provide speakers to public school audiences at the high school and junior high school level.

Recognizing that lawyers are busy, but that many of them would certainly be willing to participate in these speaker bureau programs, the committee has prepared and presents in this book a series of topic packets (units) on various substantive topics. These are designed to allow the lawyer (visiting speaker) to prepare to visit and address a school group on any of the topics in a minimum amount of time.

In addition to the topic packets (units), there is a section immediately following this introduction which is entitled: "Practical Suggestions for Visiting Speakers - Do's and Dont's: Tips on How to Communicate Effectively." Recognizing that the day to day work environment and methods of communication employed by lawyers, on one hand, and classroom teachers, on the other, differ significantly, the committee has prepared this section to assist the lawyer (visiting speaker) to prepare to communicate to a school audience.

The topic packets (units) are intended to be used by both the lawyer (visiting speaker) and the teacher of the class. In this connection, visiting speakers are requested to provide a copy of the Introduction of this book, the entire packet dealing with the speaker's topic, and also the appendix entitled HANDBOOK OF STRATEGIES to the teacher of the class. It will be best, if possible, to provide these materials to the teacher well in advance of visiting the class.

At the time of the visit the speaker should provide the teacher of the class with a copy of the section entitled DIRECTORY OF LRE PROJECTS which appears at the end of this book.

Each topic packet (unit) deals with a different subject, but each one is organized in precisely the same way. Each topic packet (unit) contains three major sections. The first section (Section I) provides materials for the visiting speaker (lawyer). The Statement of Purpose and Goals found here is intended to guide the speaker by indicating some of the key points in the materials. The Briefing Materials referred to in Section I are the basic background reading materials for the speaker.

The visiting speaker (lawyer) should review the entire topic packet (unit) in preparing to address a school audience, but should place primary emphasis on Section I and Section II of the topic packet (unit).

Section II of each topic packet (unit) is entitled: "Briefing or Background Materials for Visiting Speaker and for Teacher". Section II is the place where the Briefing Materials for the visiting speaker (lawyer) which were referred to above are placed in the topic packet (unit). A review of any of the units will show that under "Materials for Teacher", at Section III.E. there is listed "Background Material for Teacher". These "Background Materials" are the same material which are provided as "Briefing Materials" for the visiting speaker (lawyer), and they actually appear at Section II. The purpose of this is to provide, at Section II, a common or shared set of "Briefing or Background Materials" which the visiting speaker (lawyer) can use to prepare for the classroom presentation and which the teacher can use in preparing to work with the class both before and after the visiting speaker's classroom presentation.

Materials for the teacher of the class that will be visited are provided in each topic packet (unit) at Section III. These materials include suggestions about when and where to use the unit (topic packet), a set of behavioral-instructional objectives for the teacher to use in connection with the unit, lists of suggested films and pamphlets from TYLA and State Bar, suggestions for classroom discussion and debate issues, suggestions for student activities, lists of community resource persons, vocabulary terms, and a bibliography. The committee realized that no individual teacher in connection with any particular visit of a speaker to a class is likely to use all of these materials. However, the committee also realized that speakers are likely to use these materials in visiting many different classes, and the circumstances of each visit will vary. For example, some teachers may have more or less time for pre-visit or post-visit activities in connection with the visit of a speaker, and each teacher probably will be teaching each class from an individually developed lesson plan. Thus, the Section III "Materials for Teacher" are intended as enrichment materials to be used as deemed appropriate by each individual classroom teacher.

DUPLICATION OF THESE MATERIALS: Because of the expense of printing this book there will be a limited number of copies available. It is intended that copies will be provided to the chairpersons of the speaker bureau committees within various local bar groups in Texas. So long as these materials are used for non-profit activities and appropriate credit is given to the Texas Young Lawyers Association for preparation of the materials, any user of these materials is given blanket authorization and encouragement to freely duplicate, disseminate and use the materials in this book.

Ernest (Skip) Reynolds III
Chairman and General Editor

PRACTICAL SUGGESTIONS FOR VISITING SPEAKERS
Do's and Don'ts: Tips on How to Communicate Effectively

DO:

Translate legalese into English.

Use a variety of methods and examples.

Send material to the teacher for students to read before your presentation (a TYLA handbook or pamphlet, case study or newspaper article).

Begin your presentation at the students' level and relate to their world through hypothetical or real examples involving young people and the law.

Briefly tell the students about your work and explain the goals of your visit.

Move around the room. Use the chalkboard to illustrate ideas.

Introduce only one or two main topics and explain them fully.

Localize examples for students' interest and understanding.

Encourage questions.

Use humor and a personal approach. Ask the teacher to provide nametags for the students.

Express your appreciation to the teacher for incorporating a study of the law into lesson plans. Reinforce this with a letter to the principal or superintendent.

DON'T:

Lecture to students.

Try to cover a broad range of topics in one class period.

Talk down to students.

Read a prepared speech.

Let one or two students dominate the discussion. Instead, call on other students or limit the number of questions per person.

Feel you must defend everything about the operation of the legal system. An unrealistic portrait of the system can increase student cynicism; a thoughtful, balanced presentation can enhance understanding.

Give advice on individual problems.

AVOID:

Telling too many "war stories"

Combining several classes. Students may be shy about asking questions in larger groups.

Visiting schools before a school holiday.

(Adapted from A Resource Guide on Contemporary Legal Issues...for Use in Secondary Education prepared by Phi Alpha Delta Law Fraternity, International, 1981)

Topic Packet I.

THE TEXAS CONSTITUTION

Materials prepared by: Ernest (Skip) Reynolds III

NOTE: [To Visiting Speaker] Please remember to provide a copy of this entire topic packet, the Introduction section of this book, and the Handbook Of Strategies (Appendix to this book) to the teacher of the class you will be visiting. It is best, if possible, to provide these materials to the teacher in advance of your visit to the class.

At the time of your visit please deliver to the teacher a copy of the Directory of LRE Projects which appears at the back of this book.

THE TEXAS CONSTITUTION

I. MATERIALS FOR LAWYER-SPEAKER

A. Statement of Purpose and Goals:

To make students clearly aware of the (1) existence, (2) purpose, and (3) function of the Texas Constitution; to provide some historical background information about the Texas Constitution; and to discuss generally the provisions of the Texas Constitution, and the state government which it establishes.

B. Briefing Materials (see Section II, below).

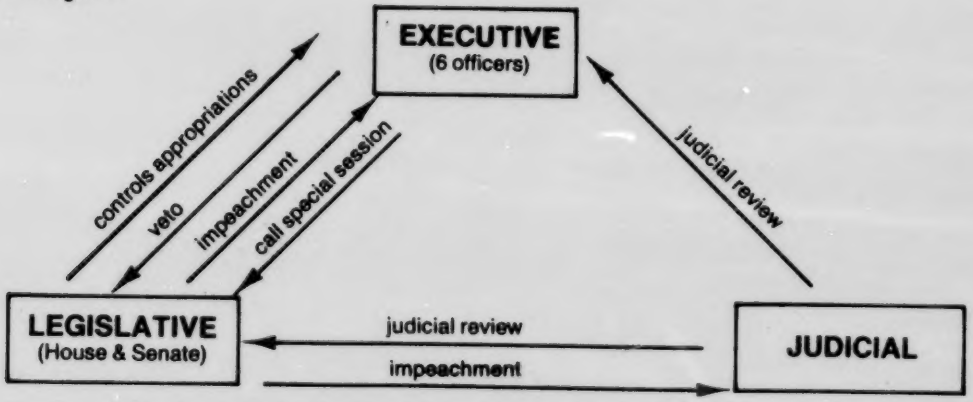
C. Practical Suggestions:

(1) Read and review the Introduction to this Handbook.

(2) Read and review the section of this Handbook which appears immediately after the Introduction, and which is entitled: "Practical Suggestions for Visiting Speakers - Do's & Don'ts: Tips on How to Communicate Effectively."

(3) When making the classroom presentation, use the chalkboard to visually explain the concept of separation of powers and checks and balances.

Example:



Explain checks and balances using arrows to indicate the interaction between the three departments.

II. BRIEFING OR BACKGROUND MATERIALS FOR VISITING SPEAKER AND FOR TEACHER

NOTE: These materials are based upon and were adapted from the TYLA videotape entitled THE TEXAS CONSTITUTION.

The Texas Constitution is a document which is the written embodiment of the highest law of the state. Stated differently, it is the supreme law of the state, and it is the source from which the state government derives its legitimate power to enact and enforce other laws.

Texas is one of the fifty states which comprise the United States of America. The United States has a written constitution, and each of the fifty states has a written constitution. Although the constitution of a state is the highest, or most important, state law, the constitutions and laws of every state are subordinate to the United States Constitution.

The Texas Constitution is similar in many ways to the United States Constitution and the constitutions of the forty-nine other states. For example, like those other constitutions, the Texas Constitution is a written document which establishes a limited government based upon the doctrines of popular sovereignty and representative democracy.

Popular sovereignty is the notion that all legitimate government power is derived from the consent of the citizens. To accomplish this, the type and form of government consented to is described in a written constitution. The present Texas Constitution was drafted by a convention whose delegates were citizens of the state. Later, it was ratified, or approved, by the voters. From time to time Texans have amended their Constitution. Each amendment makes some change in the state's highest law. The amendment process will be discussed later.

The Texas Constitution establishes a government whose powers are limited. The reason for having a limited government in a democracy is simple: it helps to prevent government from usurping power and becoming tyrannical.

Actually, the Texas Constitution limits the power of state government in two ways. First, the state government may affirmatively exercise only the powers legitimately belonging to it. Second, the lengthy Bill of Rights protects the freedom of all Texans by expressly forbidding the government of the state from doing some things which would interfere with that freedom. This dual system of limitations is not unique to Texas. It is also found in the United States Constitution and in other state constitutions.

The Texas Constitution sets up a representative democracy or republican form of government. These two terms are almost synonymous. The word republic is derived from the Latin words res publica, meaning "public thing". The republican form of government, or republic, belongs to the public, or to the citizens of Texas. It is theirs and exists as an instrument to serve their common needs. The hallmark characteristic of a republican form of government is that many public officials are elected, especially members of the legislature. This is also a hallmark characteristic of representative democracy. Frequent elections help to insure that government officials will make the government respond to the needs and wants of the citizenry.

The Texas Constitution establishes the basic framework of government for the State of Texas. Like the United States Constitution, and other state constitutions, it balances powers. Article II of the Texas Constitution divides the powers of state government and distributes them to three departments: the legislative, the executive, and the judicial. Each department is given a special and separate function, and is prohibited from invading or usurping the proper functions of the other departments. As in

all but one of the American states, the Texas Constitution establishes a bicameral legislature. That is, a legislature composed of two houses which in Texas are called the Senate and the House of Representatives. Numerous public officials in each of the three departments of the government of Texas are elected by the citizens of the state.

The Texas Constitution incorporates a system of checks and balances. This is a common feature of constitutions in America, and is used as a device to prevent government from becoming too powerful. The systems of checks and balances in the Texas Constitution is reflected in a division or separation of governmental power. This is accomplished by dividing the power of the state government among the three major departments. Furthermore, governmental powers are to some extent divided or fragmented even further by divisions of power and authority within the three major departments. This is most especially true in the legislative department, where powers are granted to a Senate and a House of Representatives whose members represent different constituencies, and in the executive department, where the Texas Constitution sets up a plural executive with six executive officers being independently elected and having different functions and duties.

In many ways the Texas Constitution is similar to the United States Constitution, but there are also important differences between these two documents and the governments they establish.

For example, the United States Constitution establishes a national government. It is a federal government, comprised of fifty states and some territories and possessions. The Texas Constitution, by way of contrast, establishes only the government of one state, Texas, and the government it establishes is unitary, not federal. The establishment of a unitary government is common among American states. A unitary system is one in which the central governing authority is possessed of all legal authority. Subterritorial units of government possess only the authority delegated to them and are subordinated to the central unit of government.

The United States Constitution contains provisions concerning national defense and the control or regulation of interstate commerce. These are peculiarly national problems and are the responsibility of the national government. The Texas Constitution, by way of contrast, contains several types of provisions which deal with problems or needs specifically state or local in character. Among them are Article IX, dealing with counties, and Article VII, dealing with public education. The county has traditionally been the basic unit of local government in Texas. Public education has historically been considered to be primarily a responsibility of state and local governments. Analogous provisions are not to be found in the United States Constitution.

You probably know that there have been Six Flags over Texas, but did you know that she has had a total of eight constitutions?

The first two existed while Texas was still a part of the Republic of Mexico. In 1824 Mexico adopted a constitution. At the Congress which drafted it, the area known as Texas was represented by Erasmo Seguin. In March 1827, a constitution was promulgated for the states of Coahuila and Texas. It allowed Texas only a very limited representation in a unicameral legislature.

On March 2, 1836, Texas declared its independence from Mexico. The document which would become the constitution of the Republic of Texas was drafted in a convention and was signed on March 17, 1836. In September, 1836, it was ratified by a popular vote. It established a unitary government, with the county as the basic unit of local government. It established three branches of government with the president and legislature being popularly elected. The legislature was called a Congress and was bicameral. The judiciary was appointive. Not all of the drafters of this document were Anglo-Americans. One of the most distinguished members of the constitutional convention was Lorenzo De Zavalla, who was eventually named Vice-President of the emergency government of the Republic.

In 1845 Texas became one of the United States. In connection with its annexation, a new Texas Constitution was drafted and adopted. This document is generally considered to be the best constitution that Texas has had. Although it was lengthier than the constitution of 1836, it was still concise and to the point. Its framers were a very able group, and many of them had been the founding fathers of the Republic. One of them was John Hemphill, an early Texas settler who had served as Chief Justice of the Supreme Court of the Republic of Texas, and who would continue to serve as Chief Justice of the first Supreme Court of the new state. This Constitution again provided for a bicameral legislature. Only the governor, lieutenant governor and legislators were to be elected, with judges and other officials to be appointed. This constitution was amended only once. The amendment, which shows the influence of Jacksonian democracy, was approved January 16, 1850, and provided that judges and numerous officers in the executive department of government should be elected by a direct vote.

The next three constitutions were constitutions of exigency. They were adopted respectively in 1861, 1866, and 1869. The Constitution of 1861 was adopted in connection with the secession of Texas from the United States and its alliance with the Confederate States of America. Basically, the 1861 Constitution was simply the Constitution of 1845 with relatively minor changes.

On February 7, 1866, a constitutional convention was convened as a result of the Union victory. The delegates to this convention consisted of both Union and Confederate sympathizers. However, as a result of the Union victory, the delegates were required to abolish slavery, establish freedom for blacks, repudiate the ordinance of secession, and repudiate debts owed by the state and the Confederacy incurred during the War Between the States.

The Constitution of 1869 was imposed by Radical Republicans. It was drafted by the "Reconstruction Convention" which held intermittent sessions from June 1, 1868, to February 6, 1869. Although it spent $100,000.00, it finally disbanded without formally completing the document which it had drawn up. This convention was often disorganized and sometimes disorderly. A black delegate from Galveston, Mr. G.T. Ruby, resigned from the convention and filed the following statement:

> Believing that the present reconstruction convention has lost, through many of its members, all regard for dignity and honor as a legislative assembly, and that its continued assemblage will only terminate in disgust to the entire country, I herewith tender my resignation as a member hereof, and as a delegate from Galveston County.

The 1869 Constitution did contain important provisions designed to support and promote public education. It also provided for annual legislative sessions and the appointment, rather than election, of judges.

The period following 1869 was one of widespread corruption in Texas government. The distrust of government which it engendered, must be borne in mind when studying the Constitution which was drafted in 1875 and adopted in 1976.

The Constitution adopted in 1876, with many amendments, is the present constitution. It is the Constitution which the panelists will discuss.

The Constitution of 1876 is longer and more detailed than other constitutions, even though the basic guidelines were drawn from the Constitution of 1845. The present Constitution places many limits on government. Although delegates to the convention which drafted it included Democrats and Republicans, whites and blacks, the strongest single influence was the Texas Grange, a farm organization. The Grange demanded "retrenchment and reform".

During the filming of the T.Y.L.A. videotape THE TEXAS CONSTITUTION a question and answer session took place in Austin, Texas. Questions were asked by a panel of Austin area high school students, and the questions were answered by two distinguished jurists, the Honorable Robert W. Calvert, retired Chief Justice, Texas Supreme Court, and the Honorable Sam D. Johnson, a judge of the United States Court of Appeals, Fifth Circuit, and formerly a justice of the Texas Supreme Court.

(1) Student Question: WHY DO WE NEED A STATE CONSTITUTION? ISN'T THE U.S. CONSTITUTION THE ONLY ONE THAT REALLY COUNTS?

Answer (Judge Calvert): No, the State Constitution is important. It is the document that sets up the framework for State Government. All state statutes derive their source and validity from this document. The everyday lives of most of us are more affected by these state statutes than by federal law.

---

(2) Q: DOES THE TEXAS CONSTITUTION HAVE A BILL OF RIGHTS LIKE THE U.S. CONSTITUTION?

A (Judge Johnson): Yes. The Texas Bill of Rights is longer and more detailed. The Federal Bill of Rights is contained in the first 10 amendments to the U.S. Constitution, but the Texas Bill of Rights fills up 29 sections of the first article of the Texas Constitution.

---

(3) Q: WHAT SORT OF GOVERNMENTAL STRUCTURE IS PROVIDED FOR BY THE TEXAS CONSTITUTION?

A (Judge Calvert): Like the U.S. Constitution, the Texas Constitution created three major departments for the state government: The legislative, the executive and the judicial.

The Texas Constitution sets up some local government structures, unlike the U.S. Constitution. Article 9 of the Texas Constitution establishes counties, hospital districts, and airport authorities. These units of local government are not independent. They are parts of the State of Texas. Thus, the State of Texas has a unitary, not a federal, form of government.

---

(4) Q: WHAT KIND OF LEGISLATURE DOES TEXAS HAVE?

A (Judge Johnson): We have what is known as a bicameral legislature. Bicameral means "two chambers" or two houses. Our bicameral legislature is composed of a Senate and a House of Representatives who are elected by the voters of the districts they represent.

---

(5) Q: WHAT IS THE FUNCTION OF THE LEGISLATIVE BRANCH OF TEXAS GOVERNMENT?

A (Judge Calvert): The Legislature meets in biennial sessions, or once every two years. The Legislature must also meet when convened by the Governor in special session. It writes necessary laws and resolutions, and approves appropriations. The Senate also confirms or ratifies appointments made by the Governor, when it agrees with the appointments.

---

(6) Q: DOES THE TEXAS CONSTITUTION PLACE LIMITS ON THE POWERS OF THE LEGISLATURE?

A (Judge Johnson): Yes. One obvious limitation comes to mind immediately: The Legislature meets in regular session only once every two years, and then is limited to a session of 140 days.

---

(7) Q: WHAT KIND OF EXECUTIVE DEPARTMENT IS ESTABLISHED BY THE TEXAS CONSTITUTION?

A (Judge Calvert): A plural executive. The Executive Department is composed of the Governor, who is the Chief Executive Officer of the State, the Lt. Governor, the Secretary of State, the Comptroller of Public Accounts, the Treasurer, the Commissioner of the General Land Office and the Attorney General. These officers, with the exception of the Secretary of State, are elected by the voters of the entire state.

---

(8) Q: WHAT IS THE FUNCTION OF THE EXECUTIVE DEPARTMENT OF TEXAS GOVERNMENT?

A (Judge Johnson): To execute and implement the Constitution, laws and judicial decisions and make sure that the State Government functions properly on a day-to-day basis.

---

(9) Q: PLEASE TELL US A LITTLE BIT ABOUT THE VARIOUS OFFICERS OF THE EXECUTIVE DEPARTMENT.

A (Judge Calvert): The Governor is the Commander-in-Chief of the military forces of the State, except when our state militia is called into the service of the United States. The Governor also has the right to convene the legislative branch of Government on extraordinary occasions. The Chief Executive must also account for public monies expended and make recommendations to the Legislature. Our Governor is also empowered to fill vacancies in state and district offices with the consent or approval of the Senate.

The Governor must insure that our laws are faithfully executed. He has the power to pardon persons convicted of crimes when recommended by the Board of Pardons and Paroles.

The Governor has the power to approve laws passed by the Legislature. He has, however, the right to veto the laws passed by the Legislature. The Legislature may override this veto by a 2/3 vote of each chamber.

A (Judge Johnson): The Lt. Governor has the duty to exercise the powers and authority of the Governor when the Governor is absent from the State, or is unable to serve, through death, disability or removal from office. The Lt. Governor is also the President of the Senate who presides over that body with the power to cast tie breaking votes.

A (Judge Calvert): The Secretary of State is appointed by the Governor with the advice and consent of the Senate. This office is charged with authenticating the publication of the laws, and must register all official acts of the Governor. This officer is also charged with appointing notaries public.

A (Judge Johnson): The Comptroller of Public Accounts is the principal tax collecting officer of the state and insures that expenditures made by state agencies are within the limits set by Legislative appropriations.

A (Judge Calvert): The State Treasurer is the executive officer in charge of receiving state funds. The Treasurer is also the custodian of the state funds. This officer pays the obligations or debts of the state.

A (Judge Johnson): The Commissioner of the General Land Office is charged with the management, control and disposition of the land owned by the state. This property is known as public lands or public domain.

A (Judge Calvert): The Attorney General represents the state in all suits and pleas in the Texas Supreme Court where the state is a party or litigant. The Attorney General is the Chief Law Officer of the state and performs two principal functions: the giving of legal advice in the form of opinions to the Governor and all other state and county authorities, and representing the State in lawsuits. This officer is specifically charged with enforcement of all laws regulating private corporations.

---

(10) Q: WHY ARE THERE SO MANY DIFFERENT OFFICERS IN THE EXECUTIVE DEPARTMENT?

A (Judge Johnson): This grows out of the underlying philosophy of government which was generally shared back in 1875 and 1976 by the people who drafted and ratified the Texas Constitution. They distrusted government. They wanted to place effective limits on governmental power, especially in the Executive Department, so as to ensure that no single person or department in government would become too powerful.

In this connection, it is noteworthy that not only are there seven executive officers but six of them are elected, thus further insuring their independence from one another.

---

(11) Q: THE THIRD DEPARTMENT OF TEXAS GOVERNMENT IS KNOWN AS THE JUDICIAL DEPARTMENT. WHAT DOES IT DO?

A (Judge Calvert): The Judicial powers of the State are vested in the Supreme Court of Texas, the Court of Criminal Appeals, the Courts of Appeals, the District Courts, the County Courts, the Commissioners Courts and the Justice of the Peace Courts. These courts are charged with the duty to protect constitutional rights and interpret and enforce the law as enacted by the legislative branch of the government.

---

(12) Q: WHAT IS THE HIGHEST COURT OF THE STATE?

A (Judge Johnson): In civil matters, the highest court is the Supreme Court of Texas. In criminal cases, the highest court is the Court of Criminal Appeals.

---

(13) Q: HOW DOES A PERSON GET TO BE A JUDGE IN TEXAS?

A (Judge Calvert): In Texas, state court judges are elected by the voters.

---

(14) Q: DO THE THREE DEPARTMENTS OF TEXAS GOVERNMENT ALWAYS COOPERATE WITH EACH OTHER?

A (Judge Johnson): The three department of government must cooperate with one another in order to properly create and maintain a government with its basis in law. However, the three departments of government do not always agree with what the law is or how it should be enforced. In order to insure the participation of all three departments of government in the decision making process, we have what is known as a system of checks and balances.

---

(15) Q: WHAT IS A SYSTEM OF CHECKS AND BALANCES?

A (Judge Calvert): Basically it is a sharing of governmental power for the purpose of protecting each branch from the other two and avoiding concentration of power.

For example, the Judicial Department can declare legislative enactments unconstitutional. In addition, the Governor can veto legislation passed by the Legislature, but then a two-thirds vote by both the Senate and the House of Representatives can override his veto.

---

(16) Q: WHY DOES TEXAS HAVE A SYSTEM OF CHECKS AND BALANCES?

A (Judge Johnson): To insure that no single department completely controls the State Government.

---

(17) Q: CAN THE CONSTITUTION BE CHANGED?

A (Judge Calvert): Yes, the Constitution is a document that evolves and changes with the needs and desires of the people it serves. The Texas Constitution, like the Federal Constitution, can be changed through amendments.

---

(18) Q: HOW IS THE CONSTITUTION AMENDED?

A (Judge Johnson): The Legislature may propose amendments by a 2/3 vote of all the members elected to each House. The proposed amendment must then be approved by the voters.

The Texas Constitution has been amended more than 200 times.

III. MATERIALS FOR TEACHER

A. When and Where to use this Unit:

1. While teaching about the Texas Constitution in courses dealing with Texas Government or Texas History:

2. Suggestion: Use this as a special program on Texas Independence Day (March 2).

3. Suggestion: Use this as a special program during Law Week (May).

4. Suggestion: Use this in conjunction with the Sesquicentennial (1986) - celebration of the 150th Anniversary of Texas Independence.

B. Behavioral/Instructional Objectives:

After completing this unit, students will be able to:

1. Describe the Texas Constitution as separate and distinct from the United States Constitution.

2. Explain what is the Texas Constitution, including a discussion of its purpose and function.

3. Have a general understanding of the historical background of the Texas Constitution from 1824 to the present time.

4. Compare the Texas Constitution and the United States Constitution, and the governments they establish, including specific discussion of similarities and differences.

5. Discuss popular sovereignty, representative democracy, limited government, and the Texas Bill of Rights.

6. Describe the basic framework of government which the Texas Constitution establishes for the State of Texas, with specific discussion of each of the three departments of government, including the role and function of each department, and the various divisions or officers of each department.

7. Discuss separation of powers and checks and balances, giving specific examples from the Texas Constitution of the application of these principles.

8. Discuss briefly the process for amending the Texas Constitution.

C. Suggested Videotape from TYLA: The Texas Constitution

Contact: Texas Young Lawyers Association
Law-Related Education
P.O. Box 12487
Austin, Texas 78711
Phone: (512) 475-1234

Note: This videotape is available from T.E.A. (Texas Education Agency) at no charge to schools in Texas. Contact the Texas Education Agency for details. (201 East 11th Street Austin 78701).

D. Suggested Pamphlets from TYLA/State Bar of Texas: None.

E. Background Materials for Teacher (see Section II, above).

F. General Discussion, Debate Issues:

1. Does Texas need a state constitution? Why or why not?

2. Explain what is a constitution.

3. Should a constitution be written? Why or why not?

4. Should a constitution be approved by the people before it becomes effective? Why or why not?

5. What is the purpose and function of the Texas Constitution?

6. How are the principles of popular sovereignty, representative democracy, and limited government incorporated into the Texas Constitution?

   (a) Do you feel that the principles of popular sovereignty, representative democracy, and limited government are desirable principles? Why or why not?

   (b) Do you feel that it is desirable to incorporate the principles of popular sovereignty, representative democracy, and limited government, into a written constitution? Why or why not?

   (c) Do you feel that it was necessary to incorporate the principles of popular sovereignty, representative democracy, and limited government, into the Texas Constitution? Why or why not?

7. Discuss the historical background of the Texas Constitution from 1824 to 1876.

8. Describe the basic framework of government which the Texas Constitution establishes for the State of Texas.

9. How are the principles of separation of powers and checks and balances incorporated into the Texas Constitution?

   (a) Do you feel that the principles of separation of powers and checks and balances are desirable principles? Why or why not?

   (b) Do you feel that it is desirable to incorporate the principles of separation of powers and checks and balances into a written constitution? Why or why not?

   (c) Do you feel that it was necessary to incorporate the principles of separation of powers and popular sovereignty into the Texas Constitution? Why or why not?

10. Compare the Texas Constitution and the United States Constitution, and the governments they establish, including specific discussion of similarities and differences.

11. Discuss briefly the process for amending the Texas Constitution.

12. Should any changes be made in the Texas Constitution? If so, what changes are suggested and why?

G. Student Activities:

1. Make a chart showing similarities between the Texas Constitution and the United States Constitution.

2. Make a chart showing differences between the Texas Constitution and the United States Constitution.

3. Consider a proposal to amend the Texas Constitution, with the class playing the role of the Texas Senate (the 31 member upper chamber of the Texas Legislature). The teacher will assume the role of the presiding officer of that body (the Lieutenant Governor - with the power to cast tie-breaking votes). The teacher may want to have students submit suggestions for the amendment proposal which will be considered. The Texas Senate (the class), under the direction of its presiding officer, will consider whether to submit the proposed amendment to the voters of the State. Following debate, a vote will be taken (2/3 vote required for approval).

H. Community Resource Persons:

Judges, lawyers, educators, newspaper editors and reporters, individuals involved in law enforcement, state legislators, and members of special interest groups; especially those with an active interest in government, or constitutional law.

I. Vocabulary:

constitution
Texas Constitution
United States Constitution
federal system
unitary government
supreme law
written constitution
constitutional convention
ratification
amendment
limited government
Bill of Rights
popular sovereignty
representative democracy
separation of powers
checks and balances
legislative department
bicameral
House of Representatives
Senate
executive department
plural executive
Governor
Lieutenant Governor
Secretary of State
Comptroller of Public Accounts
State Treasurer
Commissioner of the General Land Office
Attorney General
judicial department
elected judiciary
Supreme Court of Texas
Court of Criminal Appeals
courts of appeal
district courts
county courts
commissioners courts
justice of the peace courts

J. Bibliography:

May, Janice, Stuart A. MacCorkle, and Dick Smith, Texas Government, McGraw Hill, 1980

Topic Packet II.

THE TEXAS BILL OF RIGHTS

Materials prepared by: Ernest (Skip) Reynolds III

NOTE: [To Visiting Speaker] Please remember to provide a copy of this entire topic packet, the Introduction section of this book, and the Handbook Of Strategies (Appendix to this book) to the teacher of the class you will be visiting. It is best, if possible, to provide these materials to the teacher in advance of your visit to the class.

At the time of your visit please deliver to the teacher a copy of the Directory of LRE Projects which appears at the back of this book.

THE TEXAS BILL OF RIGHTS

I. MATERIALS FOR LAWYER-SPEAKER

A. Statement of Purpose and Goals:

To make students aware that the Texas Constitution contains a Bill of Rights; to clearly establish that it is separate and distinct from the Federal Bill of Rights (although there are similarities between the two); to discuss generally the provisions and purpose of the TEXAS BILL OF RIGHTS; and to compare and contrast the Texas and Federal Bills of Rights.

B. Briefing Materials (see Section II, below).

C. Practical Suggestions:

(1) Read and review the Introduction to this Handbook.

(2) Read and review the section of this Handbook which appears immediately after the Introduction, and which is entitled: "Practical Suggestions for Visiting Speakers - Do's & Don'ts: Tips on How to Communicate Effectively."

(3) When making the presentations to the class, the speaker might show the importance and relevance of the Texas Bill of Rights by asking the students the questions listed below:

Would the Texas Bill of Rights protect a person in the following situation?

Yes/No

1. Calling in a phony bomb threat to your school.

2. Wearing a green armband in support of the Irish Republican Army.

3. Requiring the police to obtain a warrant before searching one's house, person and papers.

4. Assuring that a person will not be tried twice for the same crime if acquitted in the original trial.

5. Guaranteeing equal rights for all persons, without regard to sex.

II. BRIEFING OR BACKGROUND MATERIALS FOR VISITING SPEAKER AND FOR TEACHER

NOTE: These materials are based upon and were adapted from the script of the TYLA videotape entitled THE TEXAS BILL OF RIGHTS.

The concept of a Bill of Rights has always held a special meaning for all Americans. The promise that a Bill of Rights would be added by amendment was necessary to secure ratification of the United States Constitution. The first ten amendments to that Constitution comprise the Federal Bill of Rights. The provisions of this Bill of Rights were taken from the constitutions of the 13 original states. The purpose of the Federal Bill of Rights was to preserve liberty by placing limits upon the power of the Federal Government.

The Texas Constitution also has a Bill of Rights. When delegates to the Texas Constitutional Convention of 1875 debated and drafted the current Texas Constitution, they knew the importance of a bill of rights. Thus, the Texas Bill of Rights appears first, as Article One, in the Texas Constitution.

As stated in the Texas Constitution, the purpose of this Bill of Rights is:

> That the General, Great and Essential Principles of Liberty and free Government may be recognized and established....

The Texas Bill of Rights is longer and more detailed than its federal counterpart, but most Texans don't know much about their Bill of Rights. In a series of interviews done in Austin, Texas, in 1983, a number of people from a variety of backgrounds were asked this question:

> What is the Texas Bill of Rights and what does it do?

Some of these people had absolutely no idea. Others knew a little, but nobody knew much about the Texas Bill of Rights. However, this lack of knowledge does not mean that the Texas Bill of Rights is not important.

According to John F. Sutton, Dean of the University of Texas School of Law:

> The Texas Bill of Rights is very important. It protects the lives and liberty of all Texans. In addition, it protects property rights. We should all become more familiar with our State Bill of Rights and how it protects us.

Dean Sutton was asked if Texas has a good Bill of Rights. He stated:

> Every Texas Constitution since Texas won her independence in 1836 has contained a Bill of Rights. Although each Constitution reflected the political temper of the time, the Bill of Rights changed very little. Today some of its language may seem archaic; some of its specific protections are repeated within it in slightly different forms; and it is longer than the Federal Bill of Rights and most State Bills of Rights; -- but the Texas Bill of Rights is generally considered among the best in the American Union.

Dean Sutton was then asked: "Since we have a Federal Bill of Rights, why do we need or want a State Bill of Rights?" He said:

> The simple answer is that a State Bill of Rights protects freedom and liberty by limiting the power of State and Local Government.
>
> Under our Federal System, State Governments perform many important functions, such as providing police protection and protecting property rights. The everyday lives of most of us are more affected by state laws than by federal laws. The Texas Bill of Rights places effective limits on the powers of the Government of the State of Texas.
>
> Although the Federal Bill of Rights places some limits on the power of State Governments, the Texas Bill of Rights stands as an independent source of individual liberty.

Justice William J. Brennan, Jr., of the United States Supreme Court has written that:

> state courts no less than federal are and ought to be the guardians of our liberties. . . state courts cannot rest when they have afforded their citizens the full protections of the Federal Constitution. State constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law.
>
> 90 Harv.L.Rev. at 491.

The 29 sections of the Texas Bill of Rights fall generally into three main categories:

First, there are some sections which contain statements of political theory - for example, Section 2 states that: "All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. . . ." (A provision similar to this first appeared in the Constitution of the Republic of Texas.)

The second category deals with substantive rights to liberty and property - for example, Section 6 guarantees freedom of worship; and Section 17 provides that: "No person's property shall be taken . . . for . . . public use without adequate compensation being made. . . ."

The third group deals with procedural rights - for example, Sections 10 and 15 contain broad guarantees of the right to trial by jury in criminal and civil cases.

With 29 sections, the Texas Bill of Rights is longer and more detailed than the Federal Bill of Rights, which is contained in the first 10 amendments to the United States Constitution. For example, 6 sections of the Texas Bill of Rights deal in detail with various aspects of the guarantees of liberty found in the first amendment to the United States Constitution.

The Texas Bill of Rights provides some specific protections not provided at all by the Federal Bill of Rights. In some instances where a specific liberty is protected by both the Texas and Federal Bills of Rights, the Texas Bills of Rights provides stronger or more effective protection. As Justice Brennan observed "one of the strengths of our federal system is that it provides a double source of protection for the rights of our citizens."

The Honorable Sam Houston Clinton, a Judge of the Texas Court of Criminal Appeals, was interviewed and responded to several questions about the TEXAS BILL OF RIGHTS. Immediately following are the questions, each followed by a summary of the answer which Judge Clinton gave:

QUESTION 1: DOES TEXAS REALLY NEED A BILL OF RIGHTS?

Yes - First and foremost the rights guaranteed and protections afforded are restrictions on our own state and local governments. It has always been so although in relatively recent times the Supreme Court of the United States has held the Fourteenth Amendment to the United States Constitution makes certain provisions of the first Ten Amendments applicable to the states. However, federal guarantees are but minimum protection and each state, including Texas, is free to impose stronger sanctions; and in many respects our forebearers did insist on tougher restrictions on government.

QUESTION 2: WHAT ARE SOME OF THE PROTECTIONS OF THE TEXAS BILL OF RIGHTS?

§3. Equal rights under law.
§19. Due process - due course of law.
§8. Freedom of speech and press.
§9. Security against unreasonable seizure and search of one's person, house, papers and possessions. Enforced by requirement for warrant.
§10. Assurance one will not be held to answer a charge of committing a serious criminal offense unless on an indictment by a grand jury.
§14. Prohibition against being twice put in jeopardy for same offense.
§15. The right to trial by jury in criminal cases and civil lawsuits.

QUESTION 3: WHY WAS TRIAL BY JURY SO IMPORTANT TO EARLY TEXANS?

Texians - with their Anglo-American heritage - regarded trial by impartial jury as a guarantee of justice - especially a protector of civil liberties in criminal cases.

But as Mexican citizens in the State of Coahuila and Texas, they soon found administration of justice in Texas was neglected by a majority of legislators from Coahuila. Mexican law taken from codes of Spain placed judicial power more in judges and tribunals.

The experience of Stephen F. Austin - the father of Texas - made the point. In 1832 as an emissary of Texians, he went to Mexico City to present petitions of a convention of Texians and a proposed constitution for a separate state - only to be clapped in jail and held without trial. His ordeal was regarded as a flagrant affront to Texas and served to fan flames of revolution.

Public trial by impartial jury is just as important today. Jurors are a cross section of the community and more or less reflect attitudes of the venue about law enforcement; so freedom and liberties of the citizen are not infringed except by decision of his fellow citizens rendered in accordance with law.

QUESTION 4: WHY WAS FREEDOM OF SPEECH AND PRESS SO IMPORTANT TO EARLY TEXANS?

Freedom of speech and press really protect thoughts that search for truth and express them in the marketplace of ideas to improve democratic institutions.

Early Texians, dissatisfied with their lot, set about the business of self-government. Of course, not all people in Texas shared their fervor. Therefore, in competing for the minds and support of others, free exercise of expression was essential. Speeches, letters, pamphlets, tracts, newspapers, assemblages and conventions - all forms of winning over citizens to the cause were the order of the day.

They rejected prior restraint of expression, but held one was responsible for abuse of that privilege, adopting precepts of Blackstone's understanding of English Common Law. Texas was and is unique in this area of freedom.

The theory is that no man or set of men should be vested with an absolute authority of determining what others may think, speak, write or publish. It is applied regularly today.

Recently, for example, the Texas Court of Criminal Appeals held in separate cases that our courtrooms must remain open to the press so that public's business of trial of criminal cases will be conducted in public. In that way, not only is the accused protected against Star Chamber oppression, but the criminal justice system is exposed to the eyes and ears of citizens concerned with improving the system.

The present Texas Bill of Rights was in part a product of the excesses of government in the time period preceding its adoption. The adoption of the present Texas Constitution in 1876 followed the Civil War and Reconstruction periods in Texas history.

The victorious Union forces imposed martial law on Texas during Reconstruction. Governor E.J. Davis and other Radical Republicans who controlled the legislature passed a militia act giving Governor Davis broad powers to declare martial law and to suspend issuance of the writ of habeas corpus.

The writ of habeas corpus is one of the oldest and most important safeguards of individual liberty. It permits anyone who is arrested to have an immediate judicial inquiry to determine whether he is being lawfully detained. By preventing illegal and arbitrary arrests, the writ of habeas corpus protects the lives and liberty of our citizens, and provides an important procedural guarantee of the rule of law.

There were times when Governor Davis suspended issuance of the writ of habeas corpus. With such experiences fresh in their minds, Texans included the following provision in our Texas Bill of Rights:

> THE WRIT OF HABEAS CORPUS IS A WRIT OF RIGHT, AND SHALL NEVER BE SUSPENDED. . . .
>
> Tx.Const., Art. I §12
> (emphasis added)

This is one example of an instance in which the Texas Bill of Rights provides a stronger guarantee of liberty, where both the Federal and Texas Bill of Rights do provide similar protections. The Federal Bill of Rights does allow suspension of the writ of habeas corpus under some circumstances; the Texas Bill of Rights does not.

There are a number of other instances in which a specific liberty interest is afforded better protection by the Texas Bill of Rights than by its federal counterpart. For example, though both the Texas and Federal Bills of Rights protect the right to trial by jury, the right is more effectively guaranteed by the Texas Bill of Rights. It guarantees a right to jury trial in more types of cases.

Both the Federal Constitution and the Texas Bill of Rights prohibit the enactment of ex post facto laws (laws passed after an occurrence and given retroactive effect). However, this provision of the Federal Constitution has been construed only to prohibit ex post facto criminal laws; thus, federal civil laws may be given retroactive effect. By contrast, the Texas Bill of Rights also contains language stating that: "No . . . retroactive law . . . shall be made." This clearly prohibits any law passed in Texas from having retroactive effectiveness.

Similarly, both the Federal Constitution and the Texas Bill of Rights guarantee due process rights. The Texas document calls this "due course" of law. Due process is the right to notice and an opportunity to be heard. Under the Federal Constitution it is a purely defensive right - nobody may be deprived of life, liberty or property without due process of law. The Texas Bill of Rights carries the due process or due course guarantee much further by specifically providing:

> ALL COURTS SHALL BE OPEN, AND EVERY PERSON FOR AN INJURY DONE HIM . . . SHALL HAVE REMEDY BY DUE COURSE OF LAW.
>
> Tx. Const., Art. I

This actually guarantees that an aggrieved Texan may bring suit in a state court. By contrast, federal courts are courts of limited jurisdiction and, therefore, access to them is limited.

The Texas Bill of Rights also provides several specific protections not provided at all by the federal Bill of Rights.

For example:

Section 18 forbids imprisonment for debt;

Section 21 provides that no criminal conviction shall affect the laws of inheritance;

Section 26 forbids monopolies.

Mark White has served Texas as Secretary of State, Attorney General and Governor. According to Governor White:

> The time devoted to writing the Texas Bill of Rights was well spent. Although it sometimes seems overshadowed by the Federal Bill of Rights, the Texas Bill of Rights is an important source of protection for individual rights and of limitations on the powers of state government.

III. MATERIALS FOR TEACHER

A. When and Where to use this Unit:

1. While teaching about the Texas Constitution in courses dealing with Texas Government or Texas History.
2. Suggestion: Use this as a special program on Texas Independence Day (March 2).
3. Suggestion: Use this as a special program during Law Week (May).
4. Suggestion: Use this in conjunction with the Sesquicentennial (1986) - celebration of the 150th anniversary of Texas Independence.

B. Behavioral/Instructional Objectives:

After completing this unit, students will be able to:

1. State that the Texas Constitution contains a Bill of Rights.
2. Identify the Bill of Rights contained in the Texas Constitution as separate and distinct from the Federal Bill of Rights.
3. Explain what is a Bill of Rights.
4. Discuss the purpose of the Texas Bill of Rights.

5. Compare the Texas and Federal Bills of Rights, including specific discussion of some similarities and some differences.

6. Discuss some of the specific protections of the Texas Bill of Rights.

C. Suggested Videotape from TYLA: The Texas Bill of Rights

Contact: Texas Young Lawyers Association
Law-Related Education
P.O. Box 12487
Austin, Texas 78711
Phone: (512) 475-1234

Note: This videotape is available from T.E.A. (Texas Education Agency) at no charge to schools in Texas. Contact the Texas Education Agency for details. (201 East 11th Street Austin 78701).

D. Suggested Pamphlets from TYLA/State Bar of Texas: None.

E. Background Materials for Teacher (see Section II, above).

F. General Discussion, Debate Issues:

1. Does Texas really need a state Bill of Rights? Why or why not?

2. Should any changes be made in the Texas Bill of Rights? If so, what changes are suggested and why?

3. Who is protected by the Texas Bill of Rights? Are non-residents, military personnel on active duty in the state, or illegal aliens protected by the Texas Bill of Rights?

4. How are the rights and protections provided in the Texas Bill of Rights guaranteed? Can they be denied? Are there any circumstances under which they should be denied?

5. Explain what is a Bill of Rights.

6. Discuss the purpose of the Texas Bill of Rights. Do you feel that this purpose is either socially desirable or socially necessary? If so, is a Bill of Rights an effective device to effectuate, realize or pursue that purpose (tell why, or why not).

7. Compare the Texas and Federal Bills of Rights, including specific discussion of some similarities and some differences.

8. Discuss some specific protections of the Texas Bill of Rights. Do you feel that any one specific protection is the most important? If so, tell which one and why you feel it is most important.

G. Student Activities:

1. Examine printed copies of the TEXAS BILL OF RIGHTS and the Federal Bill of Rights (Amendments one through ten to the United States Constitution). Conduct a class discussion comparing the two documents.

2. Attend a court session as a class and observe part of a jury trial.

3. Listen to TV news or read the newspaper for a week and report on events involving issues relating to the provisions of the Texas Bill of Rights.

4. Write questionnaires or opinion polls on issues or questions involving the Texas Bill of Rights. After administering the poll or questionnaire the students would then report back to the class on the conclusions they drew from the responses they received.

5. Interview individuals in the community involved with issues relating to the Texas Bill of Rights. Interviews could be conducted by one student, or two students working together. It is suggested that the interviews be taped (be sure to get permission in advance to tape any interview). The taped interview could be played for the class, followed by analysis and comment by student-interviewers. Then there could be a general class discussion. Suggested community resource persons for interviews include: judges, lawyers, educators, newspaper editors and reporters, individuals involved in law enforcement, state legislators, and members of special interest groups. (This will require special planning by teacher and close guidance).

6. Compile lists of possible problems that could arise if we did not have a Bill of Rights for Texas.

H. Community Resource Persons:

Judges, lawyers, educators, newspaper editors and reporters, individuals involved in law enforcement, state legislators, and members of special interest groups; especially those with an active interest in government, constitutional law, or civil liberties.

I. Vocabulary:

Bill of Rights
Texas Constitution
Federal Constitution
liberty
limited government
state government
local government
Federal System
individual liberty

individual rights
substantive rights
property rights
freedom of worship
freedom of speech
freedom of press
freedom of expression
procedural rights
due process - due course of law
search warrant
indictment
grand jury
double jeopardy
trial by jury
writ of habeas corpus
ex post facto law
Star Chamber

J. Bibliography:

There are no known books or articles providing general discussion of the Texas Bill of Rights.

Such a discussion is presented in the TYLA film entitled THE TEXAS BILL OF RIGHTS (1983).

See also: THE TEXAS BILL OF RIGHTS, Article One of the Texas Constitution.

Topic Packet III.

THE TEXAS LEGISLATURE

Materials prepared by: Ruth L. Harris and David W. Ledyard

NOTE: [To Visiting Speaker] Please remember to provide a copy of this entire topic packet, the Introduction section of this book, and the Handbook Of Strategies (Appendix to this book) to the teacher of the class you will be visiting. It is best, if possible, to provide these materials to the teacher in advance of your visit to the class.

At the time of your visit please deliver to the teacher a copy of the Directory of LRE Projects which appears at the back of this book.

THE TEXAS LEGISLATURE

I. MATERIALS FOR LAWYER-SPEAKER

A. Statement of Purpose and Goals:

To familiarize students with the bicameral system of government which we have in Texas; to explain the roles and responsibilities of the various officials and entities who govern us; to illustrate how an idea can be transformed into a law; and to encourage the students' interest and future participation in Texas Government.

B. Briefing Materials (see Section II, below).

C. Practical Suggestions:

(1) Read and review the Introduction to this Handbook.

(2) Read and review the section of this Handbook which appears immediately after the Introduction, and which is entitled: "Practical Suggestions for Visiting Speakers - Do's & Don'ts: Tips on How to Communicate Effectively."

(3) During the class discussion, the speaker might use transparencies of political cartoons or humorous stories of filibusters and logrolling to bring the legislative process to life.

(4) It is recommended that the speaker distribute to the class a copy of the attached chart explaining the legislative process or a map showing the local legislative districts.

II. BRIEFING OR BACKGROUND MATERIALS FOR VISITING SPEAKER AND FOR TEACHER

(These materials were obtained primarily from the book: May, Janice, Stuart A. MacCorkle, Dick Smith, Texas Government, McGraw-Hill, 1980.)

What is the history and purpose of the Texas Legislature?

The Texas Legislature, along with the Executive Department and the Judiciary, form the three departments of State Government established by the Texas Constitution. The Texas Legislature is the major policy making branch of government, deciding in the name of the people what laws shall be enacted.

How is our legislature organized?

The Texas Constitution states that the legislative power in Texas shall be vested in a Senate and a House of Representatives. This is known as a bicameral legislature and Texas is like most other states in that regard. Only Nebraska has a one-house, or unicameral, legislature.

The House of Representatives is the larger of the two groups, consisting of 150 members, which is the maximum number that is permitted by the Texas Constitution. To become a state representative, one must be at least 21 years of age, a qualified voter, a citizen of the State of Texas for two years, and for the last year be a resident of the district from which he is elected. The term of office is two years.

The Senate, on the other hand, is much smaller. It has only 31 members. To become a State Senator one must be at least 26 years old, a citizen of the state for five years, and a resident of the district from which he is elected for one year immediately prior to the election. The term of office is four years. Since there are fewer Senators than Representatives, the qualifications are a little more stringent.

There is no limitation on the number of terms one may serve in either the House of Representatives or the Senate.

The Texas Constitution made both the House and the Senate equal in power. Members of each body receive the same compensation, enjoy the same privileges and approve bills and laws in exactly the same way.

If we are to have 150 Representatives and 31 Senators, how do we decide the geographical areas within the state that each will represent?

The Texas Constitution of 1876 generally provided that the state be apportioned into districts on the basis of population. The Constitution of 1876 also provided that the Legislature should re-examine the population every 10 years after the federal census and reapportion itself to reflect any changes in the population within the state. However, as the state began to urbanize, and the population began to move toward the cities, the Legislature grew reluctant to reapportion and redistrict after each census. The reason was primarily one of self interest. Rural and small town legislators were fearful of losing their seats to the more densely populated areas. By 1960 Texas was malapportioned. That is, legislators

did not represent equal numbers of people. In the 1960's and 1970's there were many court decisions which ruled that the districts were no longer fair, and new laws were passed to try to make sure that each representative represented an equal number of people, so that each citizen would receive fair representation. It is a continuous process, as populations are not always stable. In 1981, following the last federal census, the Texas Legislature once again reapportioned itself in a continuing effort to make sure that each part of the state is fairly represented.

(The speaker may wish to show the audience a map of the current districts, or state the boundries of the district in which the students live. The county seat often has copies of such maps).

What kind of people serve as Senators and Representatives?

In the past, not all groups of people have been equally represented. For instance, in 1971 there were only two women in the entire Legislature; only two Blacks; only ten Mexican-Americans; and only twelve Republicans. However, by 1979, the number of women had increased to thirteen, Blacks had increased their number to fourteen, Mexican-Americans numbered twenty-one, and Republicans had increased their delegation to twenty-seven. Despite these gains, there are still some inequalities. For instance, although women constitute over fifty percent of the total population, only seven percent of the legislators are women. It is also interesting to note that as of 1979, fifty-eight percent of all Senators were attorneys, and thirty-two percent of all Representatives were attorneys.

How often does the Legislature meet, and how much are the Senators and Representatives paid?

Texas is one of the few states that holds biennial sessions rather than annual sessions. In other words, the Texas Legislature meets every two years, on the second Tuesday in January of every odd number year. Whenever the Legislature convenes in regular session, a new Legislature is born and assigned a number. The 68th Texas Legislature convened in 1983. These biennial sessions last for no more than 140 days. However, the Governor may call the Legislature into a special session which is not to exceed 30 days. Although the Legislature is "in session" for less than one quarter of the time of every two years, most legislators spend much of their remaining time visiting with their constituents, serving on committees, and discussing ideas that they think would become good laws. Many, and probably most, legislators have other jobs. They receive only about $10,000 a year from the state for their work in the Legislature.

Who are two top officials in the Texas Legislature and what are their roles?

The presiding officer of the Texas House of Representatives is the Speaker of the House. Every two years, at the beginning of each regular session, he is elected by members of the House of Representatives. He is considered one of the most powerful members of the Texas Legislature, because he has certain powers as the presiding officer. He has the power to appoint the chairman and vice chairman of each of the committees and appoints the

entire membership of many other important committees. He presides over the House when it is in session by keeping order, putting questions to a vote, and recognizing those members who want to speak. The current Speaker of the House if _____. (obtain name of current Speaker)

The Lieutenant Governor is the presiding officer of the Texas Senate. Like the Speaker of the House, the Lieutenant Governor is a very powerful person in Texas government. Unlike the Speaker, the Lieutenant Governor is selected in a statewide election. With a few exceptions, the powers of the Lieutenant Governor parallel those of the Speaker of the House. However, since the Lieutenant Governor is not really a member of the Senate, he generally is not entitled to make committee appointments. The current Lieutenant Governor is _____. (obtain name of current Lieutenant Governor)

The Texas Legislature gets most of its work done through committees. There are standing committees which are regular or permanent committees. There are also special or select committees which handle special assignments and are temporary. There ar also procedural, administrative and study committees. The chairmen of many of these committees can exert substantial power.

The Governor of Texas is not a member of the Texas Legislature, but rather is a member of the executive branch of state government. The Governor plays a very important role in state politics. The Governor has two important legislative powers. The most important is the power of the veto. When a bill is passed by both the Senate and the House, it comes to the Governor for him to sign. If the Governor doesn't like the bill, he can veto it, or kill it. I will discuss more of this legislative process in a few moments, but you should remember that the veto power is a very powerful tool.

The Governor also has the power to call special sessions. In addition to the 140 days which constitute the regular session, the Governor can call additional special sessions which last up to 30 days. There is no limit to the number of sessions a Governor may call. He could, if desired, keep the Legislature meeting constantly.

The Governor is also very important with regard to the Legislature because he can make a great number of political appointments, can influence and lobby individual Senators and Representatives, and can use his influence on the presiding officers of both the Senate and the House. The current Governor of the State of Texas is _____. (obtain name of current Governor)

I have given you a brief background about the various top officials and officers in Texas Legislature, their roles, and who they are. We cannot overlook the hard work of individual Senators and Representatives who are our individual representatives in the legislative process. Your representative in the House from the district in which you live is _____. Your representative in the Senate from this district is _____. (obtain applicable names)

How does an idea become law?

The process of making laws is a very intricate and complex one. You must remember that bills must pass both houses in exactly the same form before becoming law. The four basic stages are: 1) Introduction of the bill by a member of the Texas Legislature. (Only Senators may introduce bills in the Senate, and only Representatives may introduce them in the House.) With the exception of proposals to raise revenue, which must originate in the House of Representatives, bills may originate in either house; 2) Committee consideration of the bill follows where a measure can be thoroughly studied; 3) Once the bill leaves the committee, if in fact it receives favorable action, it is placed on the calendar for floor consideration (second reading) discussion and debate; 4) If final passage is obtained at the third reading, the bill is sent to the other legislative house where essentially the same process is followed. The bill then goes to the Governor if approved by both houses.

The attached diagram is a suggested visual aid in explaining how a bill is passed. (Make copies for all students or ask teacher to make transparency of it, p. 43).

How can you participate in state government?

There are a variety of levels of political participation available to individuals. The most common political activity is voting. Beyond voting, a person can attend political rallies, give money to a campaign, work for a political candidate, and participate in political debates and discussions. Political party membership is open to the public and one can actively participate in party conventions at all levels: precinct, county, district, state and national conventions.

Also important to democratic government is the access of citizens to full, complete, and accurate information about the legislature. One source is The Texas Register, published by the Secretary of State. It is available by subscription or can be found in libraries and at the Capitol.

Information is available to citizens through other sources, such as obtaining information through the "Open Records Act" passed in 1973, or through the "Sunshine" Law (an amendment to the Open Meetings Law) passed in 1973.

Newspapers, radio and television are often good sources of information about government.

Whatever your level of participation, it is important to remember that in a democracy it is expected that people will participate in the political process. Be aware of your role in government, and how you can be an active and informed participant.

III. MATERIALS FOR TEACHER

A. When and Where to Use this Material:

1. While teaching about the Texas Legislature in courses dealing with Texas Government or Texas History.

2. Suggestion: Use these materials in conjunction with the videotape prepared by the Texas Young Lawyers Association Committee on the Texas Legislature.

3. Suggestion: Use this material in conjunction with other materials and videotapes prepared by the Texas Young Lawyers Association on such topics as the Texas Constitution and the Texas Bill of Rights.

4. Suggestion: Use this as a special program on Texas Independence Day (March 2).

5. Suggestion: Use this as a special program during Law Week (May).

6. Suggestion: Use this to note the beginning of the Legislative Session (the second Tuesday in January, odd-numbered years).

B. Behavioral/Instructional Objectives:

After learning this material, students will be able to:

1. State the purpose and goals of the Texas Legislature.

2. Describe the organization of the Texas Legislature and know that it is bicameral in nature.

3. Know the top officials within the Texas Legislature, as well as the Representatives and Senators from the area in which the students live.

4. Describe how an idea can become a law through the legislative process.

5. Explain what an individual citizen can do to participate in the legislative process and to improve our system of government.

C. Suggested Videotapes from TYLA: The Texas Legislature
The Texas Constitution
The Texas Bill of Rights

Contact: Texas Young Lawyers Association
Law-Related Education
P.O. Box 12487
Austin, Texas 78711
Phone: (512) 475-1234

Note: These videotapes are available from T.E.A. (Texas Education Agency) at no charge to schools in Texas. Contact the Texas Education Agency for details. (201 East 11th Street Austin 78701).

D. Suggested Pamphlets from TYLA/State Bar: None.

E. Background Materials for Teacher (see Section II, above).

F. General Discussion, Debate Issues:

1. Discuss the process by which an idea can become a law.

2. Ask students to develop ideas that they would like to see become laws. Instruct them to select one, and discuss how they could promote this idea through the legislative process.

3. Discuss current issues, such as redistricting, special sessions, and pending bills.

4. How does the Texas Legislature interact with the other two departments of Texas government, those being the Executive Department and the Judicial Department? What are the checks and balances that keep each from becoming too powerful?

5. What role do the lobbyists play in the Texas Legislature, and are lobbyists a positive influence?

6. Would it be a good idea to limit the number of terms that a Governor, Senator or Representative can serve?

7. Discuss how students and other individual citizens can become more knowledgeable and involved in the legislative process.

G. Student Activities:

1. Listen to television news and read the newspapers for a week. Report on events currently being addressed by the Texas Legislature.

2. Examine and discuss recent amendments to the Texas Constitution in a class discussion.

3. Contact your local Representative and/or Senator and determine the following:

a. on what committees does he/she participate?

b. what important issues are before the legislature which will affect your area of the state?

c. what position does your Representative or Senator take on those issues in 3b?

d. what issues are before the legislature that are important to the state as a whole?

e. what position does your Representative or Senator take on those issues in 3d?

f. students could interview the Representative or Senator in their area. Interviews could be conducted by one student, or two students working together. It is suggested that the interviews be taped (be sure to get permission in advance to tape any interviews). The taped interview could be played for the class followed by analysis and comments by student interviewers. This could be followed by a general class discussion. Members of special interest groups are also suggested as possible resource persons for interviews.

4. Debate on the position of your Representative and/or Senator on the issues in 3b and 3d above.

5. Identify the standing committees in the House; in the Senate.

6. Write a letter to one of your legislators about a current issue.

7. Break the class into the "House" and "Senate." Draft a proposed, hypothetical "bill" and review the major steps in the passage of a bill by actually "walking" the bill through the House and Senate. Include each phase of each House's consideration, such as committee hearings and floor consideration. Then, upon approval of both houses, complete passage of the law by sending the bill to the "Governor" for signature. Discuss the Governor's veto power and what is required by each house to override the veto and pass the bill into law.

8. Discuss methods in which a citizen of Texas can participate in the political process, and discuss the different levels of participation in the political process available to an individual.

H. Community Resource Persons:

State Legislators, Members of special interest groups, Judges, Lawyers, Newspaper editors and reporters, Locally-elected government officials, Local political party officials and Local election officials.

I. Vocabulary:

primaries
general elections
local elections
special elections
absentee voting
interest groups
lobbying
legislature
bicameral

apportionment
biennial sessions
special sessions
Speaker of the House
Lieutenant Governor
President Pro Tempore
standing committees
legislative power
constituent power
administrative and executive power
investigative power
electoral power
enrollment
engrossment
resolutions--single, concurrent, and joint
initiative
referendum
senator
representative

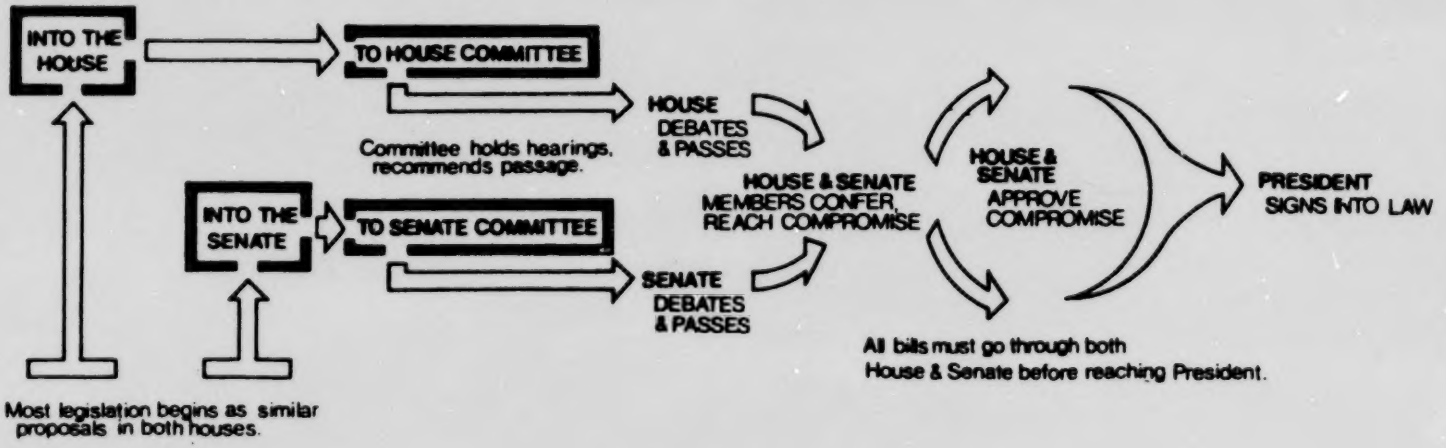
J. Bibliography:

May, Janice, Stuart MacCorkle and Dick Smith, Texas Government MacGraw-Hill, 1980.

TYLA videotapes: The Texas Legislature
The Texas Constitution

HOW A BILL BECOMES LAW

A bill is INTRODUCED, REFERRED, DEBATED & SIGNED.


INTO THE HOUSE
TO HOUSE COMMITTEE
Committee holds hearings, recommends passage.
HOUSE DEBATES & PASSES
INTO THE SENATE
TO SENATE COMMITTEE
SENATE DEBATES & PASSES
HOUSE & SENATE MEMBERS CONFER, REACH COMPROMISE
HOUSE & SENATE APPROVE COMPROMISE
PRESIDENT SIGNS INTO LAW
All bills must go through both House & Senate before reaching President.
Most legislation begins as similar proposals in both houses.

NOTE: This chart illustrates the most typical procedure by which proposed legislation is enacted into law.

Topic Packet IV.

THE COURTS OF TEXAS

Materials prepared by: Tom Carr, Charles E. Hampton and Dr. Janice May

NOTE: [To Visiting Speaker] Please remember to provide a copy of this entire topic packet, the Introduction section of this book, and the Handbook Of Strategies (Appendix to this book) to the teacher of the class you will be visiting. It is best, if possible, to provide these materials to the teacher in advance of your visit to the class.

At the time of your visit please deliver to the teacher a copy of the Directory of LRE Projects which appears at the back of this book.

THE COURTS OF TEXAS

I. MATERIALS FOR LAWYER-SPEAKER

A. Statement of Purpose and Goals:

The purpose of this discussion is to demonstrate to the students the various state and federal courts in the State of Texas; and to discuss and educate the young people about the courts and what distinguishes one court from the other. Speaker may include the presentation or trial of a case in court including a talk on the various phases to a lawsuit.

B. Briefing Materials (see Section II, below).

C. Practical Suggestions:

(1) Read and review the Introduction to this Handbook.

(2) Read and review the section of this Handbook which appears immediately after the Introduction, and which is entitled: "Practical Suggestions for Visiting Speakers - Do's & Don'ts: Tips on How to Communicate Effectively."

(3) In preparation for the classroom presentation, the speaker might collect newspaper articles on crimes or civil lawsuits that have occurred locally. Use these as a springboard for discussion of occurred how the courts differ in jurisdiction and procedure.

II. BRIEFING OR BACKGROUND MATERIALS FOR VISITING SPEAKER AND FOR TEACHER

Note: Information provided in this section may be found in the script to the TYLA video tape entitled The Texas Court System and handbook, The Courts of Texas published by the TYLA.

I. The Court System - An Overview

The Texas Constitution as amended in 1891 established the present court system, providing for a Supreme Court for civil appellate matters and a Court of Criminal Appeals, the highest state court for the appealing of criminal matters. There are fourteen Courts of Appeals which handle both civil and criminal matters, with the exception of death penalty cases which go directly to the Court of Criminal Appeals in Austin. State trial courts have general jurisdiction over both criminal and civil matters; however, in several metropolitan areas, the courts have been divided into civil district courts and criminal district courts. Judges in these courts are elected for terms, and vacancies are filled by appointment by the Governor with Senate consent. Texas is unique in that it is only one of two States which has one final appellate court for civil matters (The Supreme Court) and a separate court for final appeal of a criminal action (The Court of Criminal Appeals). Only Oklahoma has followed our system of a bifurcated court of final resort.

Additionally, the Constitution of Texas has provided for county courts and the legislature, as empowered by the Constitution, has established County Courts at Law and Probate Courts in various counties, primarily those with larger populations. Also as provided in the Constitution, Justice of the Peace Courts are established in each county. Since 1953, the same Justice Courts serve as Small Claims Courts.

The Legislature also has established through statute that each incorporated city may create one or more Municipal Courts. These Municipal Courts have concurrent criminal jurisdiction with the Justice of the Peace Courts and hear violations of city ordinances.

The Supreme Court:

The Supreme Court sits in Austin, Texas and is composed of one Chief Justice and eight Justices. To be eligible to be a Supreme Court Justice, one must be a citizen of Texas and the United States, at least thirty-five years old, a licensed attorney in the State of Texas, and have been a practicing lawyer or judge for a minimum of ten years.

As Chief Justice Joe Greenhill stated...

> "The primary function of our Court is to make decisions on all matters between individuals or corporations called civil suits...these include all suits for damages, commercial law, banks and banking, law of divorce, custody of children, title to land, disputes between persons over who owns what land or what water rights, the oil, gas, and minerals, and more particularly lately, who owns the coal, lignite and uranium. The court hears cases involving protection of consumers and deceptive trade practice injury. Our Court also decides matters involving alleged delinquency of minors or children.....
>
> Our Court also writes the Texas Rules of Civil Procedure, which is a guidebook of how cases should be tried, the conduct of jurors, the selection of jurors, the taking of testimony, the introduction of evidence, and we decide under these rules whether a case has been properly tried.

Court of Criminal Appeals:

This court has the same number of judges with the same qualifications as does the Supreme Court of Texas. It also sits in Austin, Texas. This court has the final appellate jurisdiction in criminal cases only. The term in both the Court of Criminal Appeals and Supreme Court is six years. The terms are staggered so that every two years three positions are up for election for six year terms.

Courts of Appeals:

There are fourteen geographical districts called "supreme judicial districts" in which Courts of Appeals sit. A Court of Appeals will have one Chief Justice and at least two Associate Justices for each court.

Three judges normally sit to determine a single case in each Court of Appeals. On motion, the Court may agree to hear or rehear a case by the Court as a whole. These proceedings are called "en banc," and all the judges not disqualified or otherwise unable to sit normally sit for "en banc" argument. The Courts of Appeals have appellate jurisdiction in cases from trial courts including the district courts and various county courts in each supreme judicial district.

Judges for the Court of Appeals must meet the same requirements or qualifications as those sitting on the Supreme Court.

District Courts:

The District Court is the trial court of general jurisdiction. There are over 350 separate district courts across the State of Texas. The District Courts have original jurisdiction in all cases of a criminal nature of a grade of felony, all cases involving divorce, title to land, contested elections and those cases where the amount in controversy is $5,000.00 or more. District Courts have concurrent jurisdiction, that is, jurisdiction which they share with many of the statutory County Courts as Law in cases involving at least $500.00 and not exceeding $5,000.00. It should be noted here, however, that some County Courts at Law have jurisdiction which, in fact, exceeds $5,000.00. With very minor exceptions, District Courts have original jurisdiction in all injunction proceedings.

Most District Courts have and exercise both criminal and civil jurisdiction. However, in many metropolitan areas, the District Courts may be specialized and either handle civil or criminal cases. In those cases, the courts with criminal jurisdiction are designated Criminal District Courts. Appeals from the District Courts are taken to the Court of Appeals in all civil and criminal cases with the exception of when the death penalty has been assessed against an individual defendant in a criminal action. There are also civil cases which may, at the option of the appellant, be appealed directly to the Supreme Court of Texas. Such direct appeals are rare and must involve the constitutionality of a statute.

District Court Judges must be licensed attorneys. The term of a District Judge is four years. The Texas Constitution provides a District Judge must have been a practicing lawyer or Judge of a Court of the State of Texas, or both combined, for at least four years next preceeding his election.

"Constitutional" County Courts:

In accordance with the Texas Constitution, each county in this State has a County Court situated in the county seat. In each of the county seats of all 254 counties in this State, you should find some type of courthouse with a County Judge who presides over the County Court. The County Court has civil, criminal, original and appellate jurisdiction. It has concurrent legal authority with the Justice of the Peace in civil cases between $200.00 and $1,000.00. It has concurrent civil jurisdiction with District Courts in cases where the amount in controversy exceeds $500.00 but is less than $1,000.00. Generally, the County Court has jurisdiction and general control over probate cases. There are, however, several larger cities and counties that have separate or special Probate Courts which have jurisdiction and general control over probate matters. In criminal cases,

a County Court has exclusive original jurisdiction over all misdemeanor cases when the fine imposed exceeds $200.00 (not involving municipal ordinance violations) or where a jail sentence may be imposed. Generally, unless otherwise provided by law, the County Court does not have criminal jurisdiction in a county where a Criminal District Court exists. In appellate matters, Municipal and Justice of the Peace Courts' decisions may be appealed to the County Court. Decisions of the County Court are appealed to the Court of Appeals.

County Courts at Law:

The Texas Constitution, Article 5, Section 1 empowers the Legislature to "establish such other Courts as it may deem necessary and prescribe the jurisdiction and organization thereof." The Legislature has established over 100 County Courts at Law. These courts are located primarily in the metropolitan areas. These courts were created to share and relieve the Constitutional County Judge, who may not be a lawyer, of part of his crowded docket.

County Court at Law Judges, unlike the Constitutional County Court Judges, must be licensed attorneys. There are County Courts at Law which handle civil cases; County Criminal Courts at Law which handle criminal misdemeanor matters; County Probate Courts which handle the probating of wills and guardianship matters; and County Criminal Courts of Appeals which may hear appeals of traffic and misdemeanor cases from Justice Courts or Municipal Courts. The jurisdiction of the County Courts at Law in civil matters is controversies involving over $200.00 but less than $5,000.00 in most counties. However, some courts, such as in Tarrant County, may hear controversies involving up to $20,000.00. The judges selected for the County Court and the County Courts at Law are chosen by countywide elections with the vacancies between elections being filled by the County Commissioners.

Justice of the Peace Courts:

The Texas Constitution provides that each county shall have a Justice of the Peace. The number of Justice Courts varies from county to county depending upon population. The Justice Courts have original jurisdication in criminal cases when the fine does not exceed $200.00. They have jurisdiction in civil cases when the amount in controversy does not exceed $1,000.00.

Justice courts also serve as Small Claims Courts to hear disputes over unpaid wages and salaries when the amount does not exceed $200.00 and controversies over uncollected bills when the amount does not exceed $150.00.

There is no qualification that one be a licensed attorney to be a Justice of the Peace. Judges are elected by the voters of the precinct.

Municipal Courts:

The City or Municipal Courts are authorized by statute and each incorporated municipality may have one or more Municipal Courts depending on population. These courts have original and exclusive jurisdiction over violations of city ordinances which usually involve traffic or fire violations. They also have concurrent jurisdiction with the Justice Courts in cases where there is violation of state law, within the city limits, which is punishable by a fine not exceeding $200.00. Municipal Judges also serve as Magistrates of the State and may issue search warrants for the county in which they reside. Appeals from Municipal Courts are taken to the County Courts, the County Courts at Law or District Courts for a new trial. Qualifications for Judge are determined by each city and therefore vary from community to community. Municipal Courts have no civil jurisdiction.

II. The Trial of a Case

Civil Cases:

A civil action usually begins by the filing of a written petition or complaint. The individual filing the lawsuit is called the Plaintiff and the one against whom it is filed is known as the Defendant.

After the suit is filed, the Clerk of the Court in which the petition was filed, prepares a paper known as a citation. The citation is attached to the petition and is personally served on the Defendant, usually by either a sheriff, constable, or deputy. In some situations, the Clerk may serve the citation by mailing it certified mail, return receipt requested, to the Defendant's proper address. After being served with the Plaintiff's petition, the Defendant is required to respond or answer the petition. The answer is a formal pleading, a paper filed with the Court's Clerk.

In the period between the filing and service of the petition upon the Defendant and before the actual trial of the lawsuit, the case is prepared for trial. During this time, the parties, both Defendant and Plaintiff, have the opportunity to learn more about the lawsuit or discover what the lawsuit is about or the facts to the case are.

After the case comes to court for trial, it may be tried before the Judge only or it may be tried before a judge and jury. Should a jury be requested and selected, the jurors listen to the entire case and consider the evidence admitted. The jurors are then called upon the respond to questions so as the determine what were the facts.

The judge then applies the law to the facts found by the jury to determine who wins the case, either the Plaintiff or the Defendant. If no jury is requested, the Judge both determines the facts and applies the law to the case.

The Plaintiff has what the law calls "the burden of proof on his case as a whole." This simply means that the Plaintiff, the individual bringing the lawsuit, has the burden to prove what he claims by a preponderance of the evidence. In other words he must prove his case by the "greater weight and degree of credible testimony and other evidence."

The Plaintiff has the right to proceed first in his case against the Defendant; this is because the Plaintiff has the burden of proof. The following is a general procedure followed in a trial of a lawsuit:

1. Opening statement - Plaintiff
2. Opening statement - Defendant (optional at this point)
3. Plaintiff presents his case in chief
4. Opening by Defendant if not made earlier
5. Defendant's side of the case
6. Plaintiff's rebuttal
7. Defendant's rebuttal
8. Plaintiff's closing statement or argument
9. Defendant's closing statement or argument
10. Plaintiff's argument

The number of jurors in each courtroom varies with the type of court. In District Courts, there are twelve jurors. In order to obtain a jury verdict, it need not be unanimous in civil matters. A vote of ten-to-two or eleven-to-one or unanimous produces a verdict upon which the judge may render judgment. In County Courts, County Courts at Law and Municipal and Justice Courts, there are six jurors. A unanimous decision or a decision by five of the six jurors is sufficient in civil cases in which there are six jurors.

Criminal Cases:

The basic procedures followed in the civil trial are generally followed in a criminal action as well. The State is like a Plaintiff in a civil case and the person accused of a crime is the Defendant. The State has the burden of proof and must convince a jury "beyond any reasonable doubt" that the Defendant is guilty as charged.

There are generally two classifications of crimes: felonies and misdemeanors. A felony is a more serious offense. It is punishable by death or imprisonment for one year or more in a state penitentiary. A misdemeanor is a lesser criminal offense.

Before an individual is tried for a felony offense, he or she must be indicted by a Grand Jury. A Grand Jury is composed of twelve citizens of the county who are specially appointed by the District Judge. The Grand Jury investigates all criminal matters brought to it by the District Attorney's Office and after investigating, the Grand Jury may return either a true bill, meaning that an indictment against the person will be issued, or a no bill. If a true bill is issued against an individual, felony charges will be filed. A vote of at least nine of the twelve people on the Grand Jury must be received before a true bill will be issued. To be convicted at trial of felony the verdict must be unanimous by the trial or petit jury.

The other type of criminal charge is a misdemeanor, or lesser crime. A person tried for a misdemeanor crime is tried usually through an information and not a Grand Jury indictment. An information is a formal accusation of a crime presented by prosecuting officers of the district or county attorney or city attorney, or, in some cases, a private citizen. These cases are filed and tried in the municipal, justice, or county criminal courts before a Judge or a jury of six. To be convicted of a misdemeanor crime, a jury verdict must be unanimous.

An individual found guilty of a criminal offense has a right to appeal; however, this right is limited only to the Defendant. The State cannot, if it loses the case, bring an appeal on the same offense. The Texas Court of Criminal Appeals has held that to do so, would violate provisions of the Texas Constitution.

The chart at the end of this section displays the current court structure of Texas.

III. Federal Courts

In addition to the various state, county and municipal courts operating in the State of Texas, there are also Federal Courts conducting trials and appeals in this state. Federal Courts, like State Courts, are multi-tiered, that is, you will have lower level trial courts called District Courts whose decisions may be appealed to the U.S. Courts of Appeal and then possibly have a final appeal to the U.S. Supreme Court located in Washington, D.C.

There are also special Federal Courts, such as the Tax Court and the Claims Court, that may in rare instances sit in Texas. There is at least one Bankruptcy Court in each District.

Unlike in the State Courts which have general jurisdiction (where a person is presumed to be able to have his case heard), in the Federal Courts you must affirmatively demonstrate to the Court that it has the power to hear your case. The United States Constitution has limited the types of cases Federal Courts are permitted to entertain. Article 3, Section 2 provides for Federal Courts to hear maritime cases, cases in which the U.S. is a party; actions between states or between states and citizens of other states or between citizens of different states (restricted by statute to when the amount is controversy is in excess of $10,000). Federal Courts are also empowered to hear cases in which a party alleges a Federal Law, the Constitution or a U.S. Treaty has been violated.

Federal District Court:

The U.S. District Courts are where most federal cases are originally heard. There are over 90 Districts in which one or more District Courts preside in the U.S. as well as districts in the District of Columbia, Puerto Rico, the Canal Zone, Guam and the U.S. Virgin Islands. There is at least one district in each state and in 23 states, there are more than one District

Court. District Court boundries do not extend beyond the state boundaries. In the State of Texas, there are four separate Federal Districts found solely within the State: the Northern, Southern, Eastern and Western Districts of Texas. Not one of these districts extends beyond the State of Texas' boundaries. Each of these 4 districts is subdivided into 6 or 7 divisions.

There is at least one Federal District Judge appointed to preside over cases brought in each of the divisions in the four Districts of Texas. As in the case with all Federal Judges, the District Judge is appointed for life and will serve in his capacity as Judge "during good behavior" (in the language of the United States Constitution). To become a Federal Judge, one must be appointed by the President of the United States, with the concurrence ("advise and consent") of the U.S. Senate.

United States Court of Appeals:

Cases appealed from the United States District Courts are generally heard by the U.S. Court of Appeals for a particular circuit. There are 12 separate circuits which hear appeals from the various District Courts. Each of the United States Courts of Appeal have a circuit or geographical area over which they preside. Each of these areas includes 3 or more states with the exception of the United States Court of Appeals for the District of Columbia. With the exception of that Court, each of the other circuits are numbered from the 1st to the 11th. The State of Texas is within jurisdiction of the United States Court of Appeals for the Fifth Circuit. Other Districts in the Fifth Circuit are the states of Louisiana, Mississippi, and the District of the Canal Zone.

The total number of Circuit Judgeships is established by Federal Law and varies from circuit to circuit. The Fifth Circuit has 14 Circuit Judgeships. Also, according to federal law, Circuit Judges sit in panels of not more than 3 to hear a case, unless a hearing "en banc" is ordered by a majority of the Circuit Judges. A hearing "en banc" consists of all regular active Judges sitting at once. In the Fifth Circuit, that could be 14 Judges.

The Fifth Circuit holds Court annually in the cities of New Orleans, Fort Worth and Jackson, Mississippi. It may also hold special sessions or terms at any other location within the Circuit.

U.S. Supreme Court:

The final Court to which a case may be appealed is the United States Supreme Court located in Washington, D.C. The Supreme Court is the only court specifically created by the United States Constitution.

At the present time the Court consists of one Chief Justice and 8 Associate Justices; however, the Court has not always been composed of 9 judges. The first Court, created in 1789, had 6 members. This was increased to 7 in 1807 and to 9 in 1837. In 1864 there were 10 members of the Court. Finally in 1869 Congress set the size of the Court at 9 where it remains today. A quorum of 6 Justices must be present and sitting before it will hear a case.

Other Federal Courts:

Within the Federal Courts there are a few specialized Courts. They include the Claims Court, which hears cases dealing with claims against the United States. There are also the Court of Customs and Patent Appeals, the United States Tax Court and the Court of Military Appeals. Bankruptcy Courts are special courts currently existing under authority of the District Courts.

III. MATERIALS FOR TEACHER

A. When and Where to use this Unit:

1. While teaching about the Courts of Texas in a Texas Government class.

2. Suggestion: Use this as a special program particularly regarding the trial of a lawsuit during Law Week in May of each year.

B. Behavioral/Instructional Objectives:

After completing this unit, students will be able to:

1. Identify the various Trial and Appellate Courts in the State of Texas.

2. Know that there is a County Court in each county of the State of Texas.

3. Know and understand that there is at least one or more Justice of the Peace Court in every county of the State of Texas.

4. Be able to identify and/or explain the differences between County Courts and District Courts.

5. Be able to identify and/or explain the differences between Constitutional County Courts and County Courts at Law.

6. Be able to identify and understand the distinction in the appellate procedures for civil matters and criminal matters in the State of Texas.

C. Suggested Videotape from TYLA: The Texas Court System

D. Suggested Pamphlets from TYLA/State Bar of Texas:

The Right of Trial by Jury
A Handbook for Jurors
Your Case in Traffic Court
Juveniles and the Law
The Courts of Texas

To obtain copies of the recommended videotapes or pamphlets,

Contact: Texas Young Lawyers Association
Law-Related Education
P.O. Box 12487
Austin, Texas 78711
Phone: (512) 475-1234

Note: This videotape is available from T.E.A. (Texas Education Agency) at no charge to schools in Texas. Contact the Texas Education Agency for details. (201 East 11th Street Austin 78701).

E. Background Materials for Teacher (see Section II, above).

F. General Discussion, Debate Issues:

1. Should the State of Texas have the right to appeal criminal actions due to some technicality on a trial level or on an appellate level?

2. What are the differences between Constitutional Courts and Legislative Courts?

3. Should a Justice of the Peace, Municipal Court Judge, and County Judge be a lawyer?

4. Should all Judges have to declare what party, be it either Democratic, Republican, or some third party, that they are going to announce and run for a Judge/Judicial position?

5. Should judicial terms be longer than four years in District Courts?

6. Should Judges be appointed by the Governor with Senate consent or be elected by the people?

7. Should the Legislature create more special courts to deal solely with family law matters? With will matters? With land disputes? With criminal matters and the like?

G. Student Activities:

1. Obtain a mock trial case and conduct a trial with members of the class participating as attorneys, parties, bailiff, court reporter, jurors, witnesses and the Judge. (Mock trials are available from the office of Law-Related Education, P.O. Box 12487, Austin, Texas 78711.)

2. Visit a court as a class and observe part of a jury trial.

3. Spend one week clipping out newspaper and magazine articles involving the trial of various civil or criminal cases. Examine and discuss the amount of newspaper and media coverage regarding the judicial system.

4. Attend as a class or rent a video to see the follow movies:

   Kramer vs. Kramer
   The Verdict
   First Monday in October
   Gideon's Trumpet (also in paper back)
   Anatomy of a Murder

5. Request various persons involved in community law enforcement, (City Hall, the Courthouse, an attorney, a reporter) to speak and discuss with the class, their role for guarding the judicial system. Discuss the strength and weaknesses of their organization. What in their opinion could be done to reduce existing problems?

6. Obtain the video tape and pamphlets prepared by the Texas Young Lawyers Association and the State Bar of Texas concerning various legal rights and special topics.

7. Encourage those that are more interested in the study of law and the trial of a lawsuit to participate in high school mock trial competition (contact the local Regional Service Center for more details regarding the State Mock Trial Competition), work with a Law Explorer Post (contact the local Young Lawyers Chapter in your area or the local Scout Office), or participate in the YMCA Youth and Government Program.

H. Community Resource Persons

Judges, lawyers, educators, newspaper editors and reporters, court reporters, the courthouse staff, law enforcement members, state legislators, county elected officials.

I. Vocabulary:

Supreme Court
Court of Criminal Appeals
court of appeals
district court
constitutional county court
county courts at law
justice court
small claims court
municipal court
plaintiff
defendant
petition

citation
pleadings
discovery
grand jury
information
Texas Constitution
concurrent jurisdiction
original jurisdiction
supreme judicial district
trial or petit jury
double jeopardy
indictment

J. Bibliography

The Courts of Texas, TEXAS YOUNG LAWYERS ASSOCIATION (pamphlet)

The Right of Trial by Jury, STATE BAR OF TEXAS (pamphlet)

Your Case in Traffic Court, TEXAS YOUNG LAWYERS ASSOCIATION (pamphlet)

Texas Judicial Council and the Office of Court Administration, Brief summary of the Texas Court System in the annual report (1982 report published in 1983), summary on pp. 18-35.

Supreme Court, FROM AMERICAN BAR ASSOCIATION YOUNG LAWYERS DIV. (120) Provides a unique behind-the-scenes look at the Supreme Court along with interviews with the justices. 1979, (videotape).

Law and the Courts, FROM AMERICAN BAR ASSOCIATION, DIV. ON COMMUNICATIONS (122) Handbook of court procedures with glossary of legal terms. Explains basic legal process and steps involved in a typical court case. Charts. (.50¢)

Source of Our Liberties With a Postscript 1978; Bibliography note by Stanley N. Katz, FROM AMERICAN BAR FOUNDATION (119) Documents such as Magna Carta, Mayflower Compact, Petition of Right, Constitution, with introductions, notes bibliographies. ($7.50)

Southern Newspaper Publishers Association Seminar on State and Local Courts, FROM NATIONAL CENTER FOR STATE COURTS (134), Operations and problems of state courts. The session was very well received by the attendees. (Free).

The Courts: Fulcrum of the Justice System, FROM GOODYEAR PUBLISHING COMPANY (612).

Citizen's Role in the Courts, FROM SUPERINTENDENT OF DOCUMENTS, (600), Explanation of the judicial system; suggested for witnesses, victims and jurors; glossary of court-related terms. Single copies from NCJRS-GIP program, Box 6000, Rockville, MD 20850. Organizations are encouraged to reproduce all or part of the pamphlet.

The United States Courts-Their Jurisdiction and Work, FROM SUPERINTENDENT OF DOCUMENTS, (600), Description of the federal court system. This pamphlet is out of date, but will be revised soon. (At cost)

The Federal Courts-A Citizen Guide, FROM FEDERAL BAR COUNCIL, (152), General description of federal court operations. Useful material of a generalized nature. Focused on Second Circuit-could be adapted. (Free).

Equal Justice Under Law, FROM FEDERAL JUDICIAL CENTER, (150), Four films of landmark cases which arose early in our history. These films are designed to promote constructive thinking about the United States Constitution.

Your Courthouse, FROM LAW LEAGUE OF PIERCE COUNTY, (WA90), Handbook used in conjunction with courthouse tours. Explains judicial system, trial process, individual rights, vocabulary and puzzles. (First copy free. Each additional copy at cost of $1.50).

Courts & The Classroom, FROM STUDENT LAW-RELATED EDUCATION PROGRAM (MA106), A guide to implementing a variety of LRE programs in schools, using courts as the prime resource.

From Courthouse to Classroom, FROM THE JUDGES' JOURNAL (111). (Free).

Legal Topics that Spark Student Interest, FROM THE JUDGES' JOURNAL (111). (Free)

In Search of Justice, FROM AMERICAN BAR ASSOCIATION, DIV. OF COMMUNICATIONS (122) Documentary film gives a unique view of how the justice system works by recording a day in the life of the judicial system. (available only to bar associations).

Respect for Law, FROM AMERICAN BAR ASSOCIATION, DIV. OF COMMUNICATIONS (122) Explains how the judicial system functions from arrest through trial, roles of judges, attorneys, and court officials, and appeal procedures. ($1.40).

American Law Source Book for the Classroom Teacher, FROM AMERICAN BAR ASSOCIATION YOUNG LAWYERS DIVISION (120) Classroom materials and reference information to assist in the development of high school law education programs. 1981. ($12.00).

Building Bridges to the Law: How to Make Lawyers, Judges, Policy and other Members of the Community a Part of Your Law-Related Education Program, FROM AMERICAN BAR ASSOCIATION, YOUTH EDUCATION FOR CITIZENSHIP (124) handbook of teaching activities for in-school and out-of-class programs on the law. 1981. ($9.95).

Compilation of Information Regarding Public Education Programs and Resources, FROM AMERICAN BAR ASSOCIATION YOUTH EDUCATION FOR CITIZENSHIP - COMMITTEE ON PUBLIC UNDERSTANDING ABOUT THE LAW (124) Lists materials and programs nationwide in the field of public education about the law. 1981. ($9.95).

Daring to Dream: Law and the Humanities for Elementary Schools, FROM YOUTH EDUCATION FOR CITIZENSHIP (124) Symposium papers on how law and humanities complement each other the strengthen elementary education. ($9.95).

Evidence, FROM CA JUDGE'S ASSOCIATION, (CA15), Explains "burden of proof" and what the court considers acceptable information for arriving at the truth. Discusses admissible evidence such as testimony of witnesses, writings, material objects, knowledge of the courts and presumptions; and inadmissible evidence such as hearsay. Class Project: Students analyze evidence in a murder case. ($2.00 to $1.00 each, depending on quantity).

Courts and the Classroom, FROM DISTRICT COURT ADMINISTRATIVE OFFICE, (MA500), Lesson plans for teachers. (Free)

Judicial Organizations Involved in Law-Related Education, From THE JUDGES' JOURNAL, (111). (Free).

Mock Trial 1981: Municipal Court Trial - Possession of Marijuana, Leaving the Scene of an Accident, Speeding, Rendering Indignity to Police Officer, FROM MO MUNICIPAL & ASSOCIATE CIRCUIT JUDGES ASSOCIATION (MO 160) Mock Trial with lawyer and judge participation of the above-mentioned charges. (Loan w/deposit).

Mock Trial 1982: Driving under the Influence, Carrying a Concealed Weapon, Illegal possession of a firearm, Failure to obey the lawful order of a policy officer, Interferring with a police officer in performance of his duty, FROM MO MUNICIPAL & ASSOCIATE CURCUIT JUDGES ASSOCIATION (MO160) Mock Trial with lawyer and judge participation of the above-mentioned charges. (Loan w/deposit).

The Role of Law in a Free Society and the Rights and Responsibilities of Citizenship, FROM THE MO BAR, (MO70), Origins and basic concepts of law, the need for law, the court system, major Supreme Court decisions, juvenile court, due process, the Bill of Rights in criminal cases, and the Bill of Rights and individual civil liberties. Over 200 law-related activities cross-indexed by objectives, grade level, and content. Looseleaf binder. ($10.00).

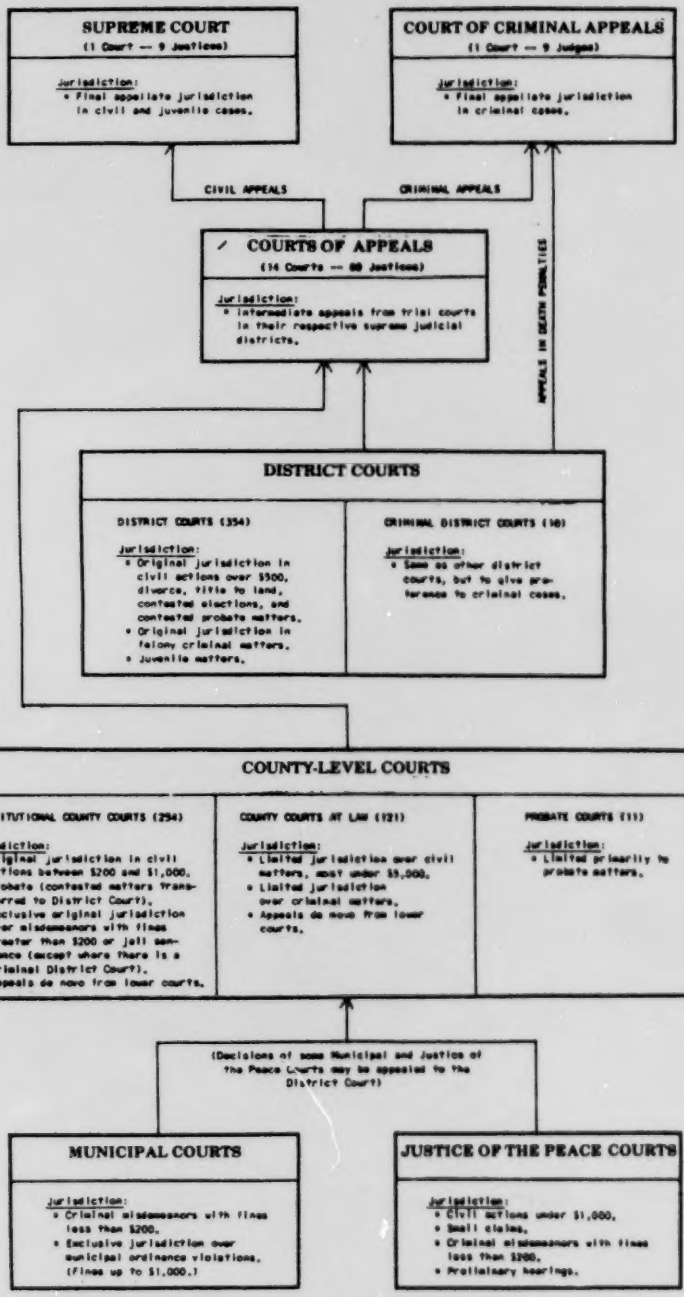
Due Process of Law: A Guide for Teachers, FROM THE MISSOURI BAR, (MO70), Questions and answers on the historical background of law, the court system, trial by jury and the role of law in society. Paperback. ($2.00).

Teacher Resource Manual for Civics, FROM NM DEPARTMENT OF EDUCATION, (NM500), Teaching lessons in court system; criminal, juvenile, individual rights, consumer, and school law; and government. (Free).

BEST COPY AVAILABLE

COURT STRUCTURE OF TEXAS

January 1, 1984


SUPREME COURT
(1 Court — 9 Justices)
Jurisdiction:
• Final appellate jurisdiction in civil and juvenile cases.
COURT OF CRIMINAL APPEALS
(1 Court — 9 Judges)
Jurisdiction:
• Final appellate jurisdiction in criminal cases.
STATE HIGHEST APPELLATE COURTS
CIVIL APPEALS
CRIMINAL APPEALS
APPEALS IN DEATH PENALTIES
COURTS OF APPEALS
(14 Courts — 80 Justices)
Jurisdiction:
• Intermediate appeals from trial courts in their respective supreme judicial districts.
STATE INTERMEDIATE APPELLATE COURTS
DISTRICT COURTS
DISTRICT COURTS (354)
Jurisdiction:
• Original jurisdiction in civil actions over $500, divorce, title to land, contested elections, and contested probate matters.
• Original jurisdiction in felony criminal matters.
• Juvenile matters.
CRIMINAL DISTRICT COURTS (10)
Jurisdiction:
• Same as other district courts, but to give preference to criminal cases.
STATE TRIAL COURTS OF GENERAL AND SPECIAL JURISDICTION
COUNTY-LEVEL COURTS
CONSTITUTIONAL COUNTY COURTS (254)
Jurisdiction:
• Original jurisdiction in civil actions between $200 and $1,000.
• Probate (contested matters transferred to District Court).
• Exclusive original jurisdiction over misdemeanors with fines greater than $200 or jail sentence (except where there is a Criminal District Court).
• Appeals de novo from lower courts.
COUNTY COURTS AT LAW (121)
Jurisdiction:
• Limited jurisdiction over civil matters, most under $5,000.
• Limited jurisdiction over criminal matters.
• Appeals de novo from lower courts.
PROBATE COURTS (11)
Jurisdiction:
• Limited primarily to probate matters.
COUNTY TRIAL COURTS OF LIMITED JURISDICTION
(Decisions of some Municipal and Justice of the Peace Courts may be appealed to the District Court)
MUNICIPAL COURTS
Jurisdiction:
• Criminal misdemeanors with fines less than $200.
• Exclusive jurisdiction over municipal ordinance violations. (Fines up to $1,000.)
JUSTICE OF THE PEACE COURTS
Jurisdiction:
• Civil actions under $1,000.
• Small claims.
• Criminal misdemeanors with fines less than $200.
• Preliminary hearings.
LOCAL TRIAL COURTS OF LIMITED JURISDICTION

PREPARED BY THE

OFFICE OF COURT ADMINISTRATION
1414 COLORADO STREET, SUITE 602
P.O. BOX 12066, CAPITOL STATION
AUSTIN, TEXAS 78711
512/475-3421

Topic Packet V.

WOMEN AND CREDIT - THEIR RIGHTS AND RESPONSIBILITIES

Materials prepared by: Ruth L. Harris

NOTE: [To Visiting Speaker] Please remember to provide a copy of this entire topic packet, the Introduction section of this book, and the Handbook Of Strategies (Appendix to this book) to the teacher of the class you will be visiting. It is best, if possible, to provide these materials to the teacher in advance of your visit to the class.

At the time of your visit please deliver to the teacher a copy of the Directory of LRE Projects which appears at the back of this book.

WOMEN AND CREDIT - THEIR RIGHTS AND RESPONSIBILITIES

I. MATERIALS FOR LAWYER-SPEAKER

A. Statement of Purpose and Goals:

To familiarize students with particular aspects of credit rights and responsibilities, especially in areas in which women have traditionally been discriminated against, so that the student will be better prepared to avoid the pitfalls of credit abuse and better prepared to enjoy the pleasures of proper credit use. Included are discussions of:

*What is Credit.
*How to use credit protection laws, such as:
Truth in Lending Laws
Truth In Leasing Laws
Real Estate Settlement Procedures Act
Equal Credit Opportunity Act
Fair Credit Reporting Act
Fair Credit Billing Act
*How to obtain credit.
*How to correct credit mistakes.
*How to build a good credit record.
*How to complain about unfair or deceptive credit practices.

B. Briefing Materials (see Section II, below).

C. Practical Suggestions:

(1) Read and review the Introduction to this Handbook.

(2) Read and review the section of this Handbook which appears immediately after the Introduction, and which is entitled: "Practical Suggestions for Visiting Speakers - Do's & Don'ts: Tips on How to Communicate Effectively."

II. BRIEFING OR BACKGROUND MATERIALS FOR VISITING SPEAKER AND FOR TEACHER

What is Credit?

To put is simply, credit enables a person to make purchases and delay payment, or to borrow money. It enables a person to buy before he can pay. You can get credit by promising to pay in the future for something you receive in the present.

(The speaker may wish to begin immediately by inviting participation from students in listing common purchases made with the use of credit. Examples could include: charging meals on a credit card, the purchase of appliances on installment plans, a loan to buy an auto or house, payment for schooling or vacations, buying clothes.)

Credit is a convenience. But there are strings attached to the use of credit. It usually costs something. And that extra cost must be paid back. When you buy on credit, you agree to do these things:

*You will pay the money you owe.
*You will make payments when they are due.
*You will give back what you are buying if you cannot finish paying for it. You likely will not get back the money you have already paid.
*You will not sell what you have bought until it is paid for.
*You will not move it away until you make all the payments.
*You will take care of any damage done to it if you have to return it.

You do not own what you are buying until all payments are made. You can use it, but it still belongs to the store.

It is important for each of you to understand what your rights and responsibilities are with regard to the use of credit so you will be prepared to use credit properly when you borrow or open a credit account. The status of women, both married and single, and their rights in establishing credit has received particular attention in recent years. Therefore, it is also important to know what laws apply that can benefit you in your use of credit.

What Laws Apply?

The following credit protection laws can help you in numerous ways, including comparing costs of credit, obtaining credit, correcting errors in credit reports, and correcting billing errors:

***The TRUTH IN LENDING LAW requires creditors to give you certain basic information about the cost of buying on credit or taking out a loan. These "disclosures" can help you shop around for the best deal. This law makes it easier for you to know two of the most important things about the cost of credit. One is the finance charge - the amount of money we pay to obtain credit. The other is the annual percentage rate (APR), which provides a way of comparing credit costs regardless of the dollar amount of those costs or the length of time over which we make payments. Both the finance charge and the annual percentage rate must be displayed prominently on the forms and statements used by a creditor to make the required disclosure.

You as an individual may sue if a business person fails to make the required disclosures. You may sue for twice the amount of the finance charge - for a minimum of $100 up to a maximum of $1,000 - plus court costs and reasonable attorney's fees.

***The TRUTH IN LEASING LAW requires disclosures which can help you compare the cost and terms of one lease with another and with the cost and terms of buying for cash or on credit. Leasing gives you temporary use of property in return for periodic payments. It has become a popular alternative to buying - under certain circumstances. For instance, you might consider leasing furniture for an apartment you'll use only for a year. The Truth in Leasing Law requires leasing companies to give you the facts about the costs and terms of their contracts, to help you decide whether leasing is a good idea.

The law applies to personal property leased to you for more than four months, for personal, family or household use. It covers for example, long term rentals of cars, furniture, and appliances, but not daily car rentals or leases for apartments.

Before you agree to a lease, the leasing company must give you a written statement of costs, including the amount of any security deposit, the amount of your monthly payments, and the amount you must pay for license, registration, taxes, and maintenance.

The company must also give you a written statement about terms, including any insurance you need, and guarantees, information about who is responsible for servicing the property, any standards for its wear and tear, and whether or not you have an option to buy the property

(The speaker may point out that the above discussion is not intended to be a complete summary of Truth in Lending/Leasing laws, but does cover the basic advantages these disclosure laws provide to consumers.)

***The REAL ESTATE SETTLEMENT PROCEDURES ACT, like the Truth in Lending/Leasing laws, is a disclosure law. The Act, administered by the Department of Housing and Urban Development, requires the lender to give you, in advance, certain information about the costs you will pay when you actually get the deed to the property, such as a house (which is probably the single largest credit purchase for most consumers - and one of the most complicated). This closing event is called settlement, and the law helps you shop for lower settlement costs.

***THE EQUAL CREDIT OPPORTUNITY ACT (15 U.S.C. Section 1691) makes it unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant is old enough to enter into a contract).

This law is of significant importance to women. Why the accent on women? Because many women are entering the housing and financial markets for the first time - propelled by changes in their lives and by new credit rights.

Here's the old story: Mary and John Jones, whose joint income is more than enough to make payments on their dream house, are turned down for a mortgage loan. The lender says Mary might become pregnant and leave her job.

Now it's illegal for creditors to ask or assume anything about a woman's childbearing plans. It's illegal even to discourage the Joneses from applying for a loan just because May is of childbearing age. And Mary's income must be counted fully by a lender.

If banks, finance companies, and other credit agencies have different rules and standards for women than men - in applications for loans, mortgages, and other forms of credit - the Courts are virtually certain to find that it is illegal discrimination. A lending institution that insists on the husband co-signing for the wife's application had better have a similar rule for husbands who apply.

The Equal Credit Opportunity Act starts all credit applicants off on the same footing. It says that race, color, age, sex, marital status - and certain other factors - may not be used to discriminate against you in any part of a credit dealing.

The general rule is that you may not be denied credit just because you are a woman, or just because you are married, single, widowed, divorced, or separated. Here are some important protections.

Sex and Marital Status.

Generally, creditors may not ask your sex on an application from (one exception is on a loan to buy or build a home).

You do not have to use Miss, Mrs., or Ms. with your name on a credit application. But, in some cases, a creditor may ask whether you are married, unmarried, or separated (unmarried includes single, divorced, and widowed).

Childbearing Plans.

Creditors may not ask about your birth control practices or whether you plan to have children, and they may not assume anything about those plans.

Income and Alimony.

The creditor must count all of your income, even income from part-time employment.

Child support and alimony payments are a primary source of income for many women. You don't have to disclose these kinds of income, but if you do creditors must count them.

Telephones.

Creditors may not consider whether you have a telephone listing in your name because this would discriminate against most married women. (You may be asked if there's a telephone in your home.)

A creditor may consider whether income is steady and reliable, so be prepared to show that you can count on uninterrupted income - particularly if the source is alimony payments or part-time wages.

Many married women used to be turned down when they asked for credit in their own name. Or, a husband had to co-sign an account - agree to pay if the wife didn't - even when a woman's own income could easily repay the loan. Single women were refused loans because they were judged somehow less "reliable" than other applicants. You now have a right to your own credit, based on your own credit records and earnings. Your own credit means a separate account or loan in your own name - not a joint account with your husband or a duplicate card on his account. Here are the rules:

*Creditors may not refuse to open an account just because of your sex or marital status.
*You can choose to use your first name and maiden name (Mary Smith); your first name and husband's last name (Mary Jones); or a combined last name (Mary Smith-Jones).
*If you're creditworthy, a creditor may not require your husband to co-sign your account, with certain exceptions when property rights are involved.
*Creditors may not ask for information about your husband or ex-husband when you apply for your own credit based on your own income - unless that income is alimony, child support, or separate maintenance payments from your spouse or former spouse.

This last rule, of course, does not apply if your husband is going to use your account or is responsible for paying your debts, or you live in a community property state. (Community property States are: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington).

Married women have sometimes faced severe hardships when cut oft from credit after their husbands died. Single women have had accounts closed when they married, and married women have had accounts closed after a divorce. The law says that creditors may not require you to reapply for credit just because you marry or become widowed or divorced. Nor may they close your account or change the terms of your account on these grounds. There must be some sign that your creditworthiness has changed. For example, creditors may ask you to reapply if you relied on your ex-husband's income to get credit in the first place.

Setting up your own account protects you by giving you your own history of debt management to rely on if circumstances do change because of widowhood or divorce. If you're getting married and plan to take your husband's surname, write to your creditors and tell them if you want to keep a separate account.

Remember, your sex or race may not be used to discourage you from applying for a loan. And creditors may not delay your application on those grounds. Under the Equal Credit Opportunity Act, you must be notified with 30 days after your application has been completed whether your loan has been approved or not. If credit is denied, this notice must be in writing and it must explain the specific reasons for denying credit or tell you of your right to request an explanation. You have the same rights if an account you have had is closed.

If you are denied credit, be sure to find out why. Remember, you may ask the creditor for this explanation. It may be that the creditor thinks you have requested more money than you can repay on your income. It may be that you have not been employed or lived in the community long enough. You can discuss terms with the creditor and ways to improve your creditworthiness.

***The FAIR CREDIT REPORTING ACT says that you may examine information in your credit file and have any errors corrected. Mistakes on your credit record - sometimes mistaken identities - can cloud your credit future. Your credit rating is important, so be sure credit bureau records are complete and accurate.

***THE FAIR CREDIT BILLING ACT requires creditors to correct errors promptly and without damage to your credit rating.

How do you know if you are creditworthy?

"Creditworthiness" is the creditor's (lender's) opinion of your ability to repay the money that you borrow.

Creditors are in business - they make money by charging interest on the money they lend. When they extend credit to an individual, they assume a risk. Creditors attempt to reduce that risk by lending only to "creditworthy" individuals. They determine your "creditworthiness" by asking the following questions:

1. Have you had any bad debts or a bad credit record in the past?
2. How much money do you earn?
3. How long have you worked at your current job?
4. How long have you lived at your current address?
5. How frequently have you changed your address in the past?
6. What valuable property do you own?
7. How much of your income must you pay for all debts that you now owe?
8. Do you have a good record of repaying money that is loaned to you?

How do you build up a good credit history?

Here are several ways you can begin to build up a good credit history:

1. Open a checking account or a savings account, or both. These do not begin your file, but may be checked as evidence that you have money and know how to manage it. Cancelled checks can be used to show you pay utilities or rent bills regularly, a sign of reliability.

2. Apply for a department store credit card. Repaying credit card bills on time is a plus in credit histories.

3. If you're new in town, write for a summary of any credit record kept by a credit bureau in your former town. (Ask the bank or department store in your old home town for the name of the agency it reports to.)

4. If you don't qualify on the basis of your own credit standing, suggest to the creditor that someone might co-sign your application.

5. If you're turned down, find out why and try to clear up any misunderstandings.

Women who are divorced or widowed might not have separate credit histories because all past credit accounts were listed in their husbands' names. But they can benefit from these records. Under the Equal Credit Opportunity Act, creditors must consider the credit history of any account women have held jointly with their husbands. Creditors must also look at the record of any account held only in the husband's name if a woman can show it also reflects her own creditworthiness. If the record is unfavorable - if an ex-husband was a bad credit risk - she can try to show that the record does not reflect her own reputation.

How do you protect your credit rating?

The best way to keep up your credit standing is to repay all debts on time. Let your creditors know if you can't pay. Do this before payment is due. Explain why you can't pay. Sometimes other agreements can be made.

And remember: to protect your credit - to save your time, your money, and your future credit rating - rely on the credit laws previously discussed in order to correct mistakes and misunderstandings that can tangle up your credit accounts. The right to credit can best be protected by your proper use of credit and the use of credit laws available to you.

III. MATERIALS FOR TEACHER

A. When and Where to Use This Unit:

1. While teaching about the country's economy and our economic system in High School Economics.
2. While studying about financial institutions and the role of the financial institutions in the consumer's life in Home Economics or Business Law classes.
3. While studying women's rights and the many advances obtained through legislation to eliminate discriminatory practices.
4. Suggestion: Use this as a special program during Law Week (May).

B. Behavioral/Instructional Objectives:

After completing this unit, students will be able to:

1. Explain what is credit.
2. Discuss some of the specific protections available to a consumer today through the use of credit protection laws.
3. Explain how to build a good credit record.
4. Recognize unfair credit practices and state how relief can be obtained.

C. Suggested Films from TYLA: None

D. Suggested Pamphlets:

1. Consumer Handbook to Credit Protection Laws
2. What Truth In Lending Means to You
3. If You Borrow To Buy Stock
4. How To File a Consumer Credit Complaint

5. The Equal Credit Opportunity Act and . . . Age
6. The Equal Credit Opportunity Act and . . . Woman
7. The Equal Credit Opportunity Act and . . . Doctors, Lawyers, Small Retailers
8. The Equal Credit Opportunity Act and . . . Credit Rights in Housing
9. Fair Credit Billing
10. Truth In Leasing
11. A Guide to Federal Reserve Regulations
12. Government in the Sunshine/A Guide to Meetings of the Board of Governors of the Federal Reserve System
13. If You Use a Credit Card
14. Alice in Debitland: Consumer Protections and the Electronic Fund Transfer Act

(Copies of the above and other consumer pamphlets are available upon request from Publications Services, Division of Support Services, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.)

E. Background Materials for Teachers (See section II, above.)

F. General Discussion, Debate Issues:

1. Are the existing credit protection laws adequate? Why or why not?

2. Should any changes be made in the Equal Credit Opportunity Act? If so, what changes are suggested and why?

3. What are the individual responsibilities of the person who chooses to apply for, obtain, and use credit (in other words, responsibilities as opposed to the protections provided by law)?

4. How can credit be abused by the individual who chooses to use credit?

5. Discuss the protections available by law to the consumer who uses credit. Do you feel that any one specific protection is the most important?

6. Who is protected by the credit laws?

7. Do women have adequate protection from discrimination by creditors?

8. What more could be done to protect women from discrimination and/or unfair credit practices?

G. Student Activities:

1. Compile a list of possible problems that could arise if we did not have credit protection disclosure laws.

2. Compile a list of possible problems women could encounter if we did not have the Equal Credit Opportunity Act.

3. Interview five (5) merchants in your community and determine:

   a. Common abuses of credit by consumers.
   b. Considerations the merchants will make when the consumer notifies them that a bill can't be paid at that time.
   c. Advantages to the merchant of making credit available to customers.
   d. Obligations of the merchant placed on the business by credit protection laws.
   e. What are typical reasons for denying credit applications?

4. Interview representatives of local women's rights groups to learn of common problems encountered by newly-separated or divorced women upon application for credit, or upon buying/leasing a home. Report findings to class.

5. Interview a representative in a banking/lending institution and discuss credit problems encountered with large scale purchases (home mortgages, etc...). Report findings to class.

H. Community Resource Persons:

Lawyers, merchants, financiers, a representative from the League of Women Voters, a representative of Credit Reporting agencies and/or Credit Bureaus, representatives from Women's Rights groups.

I. Vocabulary - Glossary of Terms:

Annual Percentage Rate - The cost of credit as a yearly rate.

Appraisal Fee - The charge for estimating the value of property offered as security.

Asset - Property that can be used to repay debt, such as stocks and bonds or a car.

Billing Error - Any mistake in your monthly statement as defined by the Fair Credit Billing Act.

Collateral - Property offered to support a loan and subject to seizure if you default.

Co-signer - Another person who signs your loan and assumes equal liability for it.

Credit - The promise to pay in the future in order to buy or borrow in the present; a sum of money due a person or a business.

Credit Bureau - An agency that keeps your credit record.

Credit Card - Any card, plate, or coupon book used from time to time or over and over again to borrow money or buy goods or services on credit.

Credit History - The record of how you have borrowed and repaid debts.

Creditor - A person or business from whom you borrow or to whom you owe money.

Credit-related Insurance - Health, life, or accident insurance designed to pay the outstanding balance of debt.

Creditworthiness - Past and future ability to repay debts.

Default - Failure to meet the terms of your credit agreement.

Disclosure - Information that must be given to consumers about credit or leasing costs and terms.

Elderly Applicant - As defined in the Equal Credit Opportunity Act, a person 62 or older.

Finance Charge - The total dollar amount credit will cost.

Joint Account - A credit account signed by two or more people so that all can use the account and all assume liability to repay.

Judgmental System - A nonstatistical system for evaluating creditworthiness.

Late Payment - A payment made later than agreed upon in a credit contract and on which additional charges may be imposed.

Lessee - A person who signs a lease to get temporary use of property.

Lessor - A company that provides temporary use of property, usually in return for periodic payment.

Liability on an Account - Legal responsibility to repay debt.

Open End Credit - A line of credit that may be used over and over again, also called a charge account or revolving credit.

Point-of-sale (POS) - A method by which consumers can, through the use of electronic terminals located in stores, pay for purchases by having their deposit accounts debited directly without the use of checks.

Points - Some extra percent of the amount borrowed, included as part of your loan fee. Finance charges paid at the beginning of a first mortgage in addition to monthly interest; each point equals one per cent of the loan amount.

Punitive Damages - Damages awarded by a court above actual damages as punishment for a violation of law.

Rescission - The cancellation of a contract.

Security - Property pledged to the creditor in case of a default on a loan; see collateral.

Security Interest - The creditor's right to take property or a portion of property offered as security.

Service Charge - A component of some finance charges, such as the fee for triggering an over-draft checking account into use.

Truth In Lending Laws

Truth In Leasing Laws

Real Estate Settlement Procedures Act

Equal Credit Opportunity Act

Fair Credit Reporting Act

Fair Credit Billing Act

J. Bibliography:

Consumer Handbook to Credit Protection Laws, Board of Governors of the Federal Reserve Board, Washington, D.C. 20551.

Topic Packet VI.

CONSUMER LAW - TEXAS DECEPTIVE TRADE PRACTICES ACT

Materials prepared by: Stanley E. Crawford, Jr. and Harrell L. Davis, III

NOTE: [To Visiting Speaker] Please remember to provide a copy of this entire topic packet, the Introduction section of this book, and the Handbook Of Strategies (Appendix to this book) to the teacher of the class you will be visiting. It is best, if possible, to provide these materials to the teacher in advance of your visit to the class.

At the time of your visit please deliver to the teacher a copy of the Directory of LRE Projects which appears at the back of this book.

CONSUMER LAW - DECEPTIVE TRADE PRACTICES ACT

I. MATERIALS FOR LAWYER-SPEAKER

A. Statement of Purpose and Goals:

To make students aware of some of the remedies available to them as consumers when they purchase goods or services in Texas; to suggest possible courses of action available to them when they have a complaint concerning a purchase; and to alert them to possible pitfalls in the course of resolving a complaint.

B. Briefing Materials (see Section II, below).

C. Practical Suggestions:

(1) Read and review the Introduction to this Handbook.

(2) Read and review the section of this Handbook which appears immediately after the Introduction, and which is entitled: "Practical Suggestions for Visiting Speakers - Do's & Don'ts: Tips on How to Communicate Effectively."

(3) During class presentation, the speaker might use roleplaying to illustrate "bait and switch" and "puffing." The General Discussion section of this unit contains excellent ideas for discussion.

II. BRIEFING OR BACKGROUND MATERIALS FOR VISITING SPEAKER AND FOR TEACHER

NOTE: These materials are based in part upon the script from the TYLA videotape on the Texas Deceptive Trade Practices Act.

In recent years, the principle of caveat emptor ("let the buyer beware") has been significantly eroded in areas of legal practice pertaining to consumers. A variety of statutory protections have been enacted.

The most important statute passed to protect Texas consumers has been the Texas Deceptive Trade Practices - Consumer Protection Act, Tex. Bus. and Com. Code §§17.41 et. seq., first enacted by the 63rd Legislature and effective on May 21, 1973. The Act was extensively amended in 1975, 1977, 1979 and 1981. In general, the version of the Act which applies to a particular set of circumstances is governed by the date of the acts which give rise to the cause of action, rather than the date of sale. See Woods v. Littleton, 554 S.W.2d 662 (Tex. 1977).

The purpose of the Act, as set forth in § 17.44, it "to protect consumers against false, misleading and deceptive business practices, unconscionable actions, and breaches of warranty and to provide efficient and economical procedures to secure such protection." The Act is to be liberally construed in favor of consumers. This represents a definite change of emphasis from the remedies available under common law, which often raise numerous barriers to a plaintiff's recovery and require difficult elements

of proof, such as the proof of wrongful intent required to establish a cause of action for fraud, and the privity requirement between the consumer and the defendant. See Cameron v. Terrell and Garrett, Inc., 618 S.W.2d 535, 540-541 (Tex. 1981).

Under the Act, a "consumer" has standing to sue. A consumer is defined as "an individual, partnership, corporation or governmental entity who seeks or acquires by purchase or lease, any goods, or services." §17.45(4). "Goods" are defined as "tangible chattels or real property purchased or leased for use." § 17.45(1). "Services" are defined as "work, labor, or service purchased or leased for use, including services furnished in connection with the sale or repair of goods." § 17.45(2).

Note that this definition of who is a "consumer" is considerably more expansive than the traditional understanding of that term. Even governmental units and companies can be consumers with standing to sue under the Act. Further, the protection of the Act cannot be waived, and any attempt to obtain such a waiver by contract or otherwise is unenforceable and void unless the "consumer" involved has assets of at least twenty-five million dollars at the time of the transaction. §17.42.

Three separate areas of conduct or activities by sellers are encompassed by the Act. First, any violation of the "laundry list" (which contains twenty-three (23) separate items) set forth in § 17.46 is condemned as a "false, misleading, or deceptive act or practice." Violations of the "laundry list" include

(i) representing that goods are new if they are not,
(ii) causing confusion or misunderstanding as to the source, sponsorship or approval of goods or services
(iii) representing that goods or services are of a particular standard, quality or grade if they are not,
(iv) advertising goods or services with the intent not to sell them as advertised, or with the intent of not keeping enough of such goods or services on hand to supply a reasonably expectable public demand,
(v) misrepresenting the rights, remedies or obligations which an agreement confers,
(vi) knowingly making false or misleading statements of fact concerning the need for parts, replacement or repair service,
(vii) fraudulently advertising a "going out of business" sale,
(viii) representing that work or services have been performed when they have not been or that parts have been replaced when this has not been done, and
(ix) failing to disclose information concerning goods or services known to the seller at the time of the transaction, when this was intended to induce a consumer into the transaction and the consumer would not have entered into the transaction if the information had been disclosed.

The second area covered by the Act includes breaches of express or implied warranties. § 17.50(a)(2). Express warranties can include almost any affirmation of fact or promise about goods or services by the seller which is part of the basis of the consumer's bargain. See § 2.313(a) of the Texas Business and Commerce Code. Express warranties can also arise from the seller's use of samples or models, or when goods are sold by description. Implied warranties automatically arise under the Texas Business and Commerce Code whenever goods are sold (by a merchant). Unless disclaimed, any sale may result in implied warranties of good title, merchantability (See § 2.314 of the Texas Business and Commerce Code) or fitness for a particular purpose (See §2.315 of the Texas Business and Commerce Code).

The third area covered by the Act includes "unconscionable acts." This may involve anything from actual fraud to simply taking extremely unfair advantage of another. The Act defines an "unconscionable action or course of action" as that which "takes advantage of the lack of knowledge, ability, experience, or capacity of a person to a grossly unfair degree; or. . .results in a gross disparity between the value received and consideration paid in a transaction involving transfer of consideration." See 17.45(5).

A factual situation may involve several different violations of the Act. Assume that you buy a washing machine. You tell the salesperson that you need to wash heavy loads of clothing. He sells you a washer which is not suitable for this purpose. The washer breaks under heavy use. The salesman then attempts to repair it and represents that it has been repaired, when it has not.

On these facts, breaches of implied warranties of merchantibility and fitness for a particular purpose have probably occurred. The seller has also violated the "laundry list" by falsely representing that repairs have been completed. Finally, his conduct may be "unconscionable" because you have paid substantial consideration for a worthless washing machine, resulting in a "gross disparity" between value received and consideration paid.

What happens if you have a violation of the Act? The remedies are set forth in § 17.50(b). Any consumer who prevails may obtain

(1) the amount of actual damages (this has been interpreted to mean damages measured according to common law measures of recovery);
(2) two times the portion of actual damages that does not exceed $1000 (this may be recovered automatically);
(3) trebled the amount of actual damages which exceed $1000 (currently this can be recovered only if the defendant's conduct was committed "knowingly");
(4) an injunction prohibiting the seller's acts or failures to act (this significantly diminishes the normal showing required to obtain a mandatory injunction);
(5) any orders necessary to restore to the consumer any money or property, real or personal, acquired in violation of the Act; and
(6) any other relief which the court deems appropriate, including the appointment of a receiver for the seller's business or the suspension of its authorization to do business at all.

A key feature of the act is the mandatory award of "court costs and reasonable and necessary attorney's fees" to a consumer who prevails in his or her deceptive trade practice litigation. § 17.50(d). Prior to the Act, a consumer who had a valid claim against a merchant often was prevented from recovering on that claim because there was no provision for the recovery of attorney's fees under the common law. Consumers were reluctant to press such claims because the costs of so doing were often higher than the amount of the claim. With the attorney's fees provision of §17.50(d), consumers are much more willing to pursue their grievances against merchants, and attorney's are far more willing to represent consumers having such problems.

Though the Act provides far greater relief to the consumer than was afforded under the common law, it is only one arrow in the consumer's arsenal, and by it's terms (§ 17.43) is a remedy available in addition to any other remedy provided consumers by any other law.

In handling any consumer transaction under the Act, you must be careful to provide written notice of your specific claims of injury and actual damages suffered. See § 17.50A of the Act. This is now an absolute prerequisite for filing a claim under the Act, and anyone who feels he has a cause of action under the statue should seek legal advice in drafting such a notice in order to insure that it is sufficient. If the seller does not tender a reasonable amount in satisfaction of the claim, suit may then be filed.

Other courses of action are also available in the event that you have a consumer complaint. For example, a complaint may be filed with the Consumer Affairs Division of the Texas Attorney General's Office. The Texas Attorney General can bring a cause of action of its own against the seller under the Act, and fines of up to $2,000 per occurrence and up to $10,000 for multiple violations can be recovered. In addition, contact with the local Better Business Bureau, or with other industry associations in the vicinity may be fruitful. For example, problems with an automobile might be resolved by contact with the Texas Automobile Dealers Association. However, there is no substitute for direct legal action if a seller seems unwilling to do the right thing.

Certain practical steps can be taken to avoid a situation which leads to a consumer complaint, or at least to minimize the inconvenience involved. For example:

(1) Make sure you understand the terms of a sale or purchase. Read all contracts before you sign them and obtain assistance in interpreting the contractual provisions if any of them are unclear to you. Know whether or not there are hidden costs or conditions, whether there are extra charges for services such as delivery, whether any interest or other credit charge will be imposed, whether any guarantees are provided, whether the price is reasonable, and so forth.

(2) Keep all documents in connection with the purchase, so that if you have a problem you can provide the seller with proof of purchase, any estimates given concerning the cost of repair, and so forth.

(3) If you have a problem with a purchase, contacting the manufacturer or the president if the selling person is not responsive to your complaint. At least initially, be polite in making your demand for satisfaction.

(4) When obtaining estimates for the costs of services, ask for a written estimate. Insist that you be contacted if the services will cost significantly more than the estimate, and do not agree to "open-ended" service order which purport to authorize all repairs "necessary."

(5) If you purchase a new product, inspect it carefully upon delivery before accepting it. Once you accept a product with minor defects which could have been revealed upon inspection, you may have waived any right to complain you would otherwise have.

(6) Keep thorough records of all problems experienced with an unsatisfactory product, so that you will have something to refresh your memory with in the event of subsequent litigation or other proceedings. It is visually helpful to sit down immediately after a problem occurs and write down a thorough chronology of all events leading up to the creation of the problem.

(7) Get any promises which are important to you in writing. Oral contracts are often valid, but there is no substitute for a written agreement.

For more information, research the state and federal statutes. Some of the relevant federal statutes in this area include regulation of automobile odometer disclosures (15 U.S.C. §§ 1981-91), Federal Trade Commission jurisdiction to prohibit deceptive acts or practices in or affecting commerce (15 U.S.C. § 45(a)(1)), Fair Packaging and Labeling Requirements (15 U.S.C. §§ 1451-61), Prohibitions of Fraud by Wire, Radio or Television (18 U.S.C. § 1343), the Magnuson-Moss Warranty Act regulating warranty disclaimers and limitations (15 U.S.C. §§ 2301-2312), the Federal Truth in Lending Act governing credit disclosures in consumer transactions (15 U.S.C. § 1601-1666(j)), and others.

State statutes affecting consumer rights and remedies in various transactions include the Texas Business Opportunity Act (Tex.Rev.Civ.Stat. Arts. 5069-16.01 to 5069-16.15), damage claims for breaches of warranty under the Texas Business and Commerce Code (§§ 2.714 and 2.715), regulation of Debt Collection Practices (Tex.Rev.Civ.Stat.Arts. 5069-11.01-11.11), the Home Solicitation Transactions Act (Tex.Rev.Civ.Stat.Arts. 5069-13.01-13.06) the Texas Mobile Home Standards Act (Tex.Rev.Civ.Stat.Art. 5221(f)), regulations of unfair settlement practices by insurance companies of Texas Insurance Code §§ 21-21 et. seq.), regulations of the interest allowable on various loans (Tex.Rev.Civ.Stat.Art. 5069-1.01 et. seq.), and many others.

C. Bibliography:

By far the best source of information concerning the Texas Deceptive Trade Practices - Consumer Protection Act is Texas Consumer Litigation (2nd ed.), by David Bragg, Philip Maxwell and Joe Longley (1983). The publisher is the Texas Law Institute, Inc., P.O. Box 13537, Austin, Texas 78711. The presentation of this volume is sometimes slanted in favor of the plaintiff, but it is still the best single compilation of information concerning the Act.

Also excellent is Vol. 9 of the Texas Litigation Guide by Dorsaneo, Anderson & Winship (1977). The publisher is Matthew Bender.

Useful law review articles include:

"A Remedy for Undermade and Oversold Products - Texas Deceptive Trade Practices Act" by Michael Lynn, 7 St. Mary's L.J. 698 (1976).

"Analysis of 1979 Amendments to Deceptive Trade Practices Act," by Robert Goodfriend and Michael Lynn, 33 Southwestern L.J. 952 (1979).

"Anatomy of a Deceptive Trade Practices Case" by Michael Lynn, 31 Southwestern L.J. 867 (1977).

"1979 Amendments to Deceptive Trade Practices - Consumer Protection Act" by Michael Curry, 32 Baylor L. Rev. 51 (1980).

A further list of law review articles can be found in Vol. 9 of the Texas Litigation Guide and behind each section of the Deceptive Trade Practices Act.

III. MATERIALS FOR TEACHER

A. When and Where to Use this Unit:

1. When studying consumer law in Business Law or Home Economics classes.

2. When studying civil law in practical law or econimics social studies classes.

3. Suggestion: Use this as a special program during Law Week.

B. Behavioral/Instructional Objectives:

After completing this unit, students will be able to:

(1) State that Texas has enacted certain statutes which give consumers special rights and means of resolving consumer complaints;

(2) Be aware of the elements of and the significance of a contract;

(3) Describe the special remedies provided by the Texas Deceptive Trade Practices - Consumer Protection Act;

(4) Demonstrate awareness of the fact that consumers can avoid, and in some cases resolve, consumer problems on their own;

(5) Explain some of the tactics which can be used in resolving consumer complaints;

(6) Describe the responsibility that all of us have as consumers for the effective and efficient operation of our own economic system.

C. Suggested Videotape from TYLA: Deceptive Trade Practices Act

Contact: Texas Young Lawyers Association
Law-Related Education
P.O. Box 12487
Austin, Texas 78711
Phone: (512) 475-1234

Note: This videotape is available from T.E.A. (Texas Education Agency) at no charge to schools in Texas. Contact the Texas Education Agency for details. (201 East 11th Street Austin 78701).

D. Suggested Pamphlets from TYLA:

A Guide to the Texas Deceptive Trade Practices Act.

Contact: Texas Young Lawyers Association
P.O. Box 12487
Austin, Texas 78711
Phone: (512) 475-1234

E. Background Materials for Teacher (see Section II, above).

F. General Discussion, Debate Issues:

(1) Ask students to list goods or services which they have recently purchased, and explain how the decision to purchase each was made. Determine whether students responded to advertising or peer pressure in deciding to make a purchase, and identify the characteristics of a smart purchaser; e.g., avoid impulse buying, obtain information and compare different products before making a major purchase, compare warranties and repair capabilities, do necessary research in publications such as Consumer Reports, and compare merchants in the area offering the same product or service.

(2) Assume that a consumer responds to a television ad and purchases a sofa of a particular design and covered with a particular fabric. A sales price of $600 is paid in advance, but he is told he will have to wait a month for that particular design of sofa covered with that particular fabric, which is presently out of stock. One month later, the sofa arrives but is covered with a different, unsuitable fabric which does not match his decorating scheme. Discuss what this consumer could have done differently at or before the time of purchase, what steps he should take in discovering this error, and whom the consumer can contact for assistance in resolving this complaint.

Obviously a fact situation of this type leads to a number of avenues of discussion. Prior to making the purchase, the consumer could have been more careful in comparison shopping, rather than simply responding to a television advertisement. He could have checked out the reputation of the seller, to see whether or not others had similar complaints about nonconforming merchandise being delivered. Further, the consumer should not have paid the full purchase price in advance. It would have been wiser only to pay a small deposit. Once the sofa arrives and is inspected, the consumer should refuse to accept it if the fabric in which it is upholstered is completely unacceptable. If he accepts the sofa as delivered, he may have lost the right to rescind the contract and obtain a full refund. However, he still probably has a remedy under the Texas Deceptive Trade Practices Act, including the right to sue for his damages, which might include such things as the cost of re-upholstering the sofa with an acceptable fabric.

The consumer can also use this legal remedy as leverage in negotiating a fair settlement. Students can be given an opportunity to play the roles of the consumer and the store personnel, to demonstrate effective and ineffective negotiating techniques. Finally, the consumer should make sure that he had a purchase order or other document specifying the correct fabric; otherwise, he may have difficulty proving his case to a jury if litigation is filed.

(3) What organizations are available in the community to help consumers with complaints? Review with students the availability of the Better Business Bureau, the local Chamber of Commerce, professional associations and trade associations, the Consumer Protection Division of the Attorney General's Office, the Federal Trade Commission, the Food and Drug Administration, the Consumer Product Safety Commission, and others. See pages 112-14 of Street Law: A Course in Practical Law, West Publishing Co.

(4) Discuss the definition of a contract which Texas courts have said is a "promise or set of promises, the performance of which the law recognizes to be a duty and for the breach of which it confers a remedy." Foster v. Wagner, 343 S.W.2d 914 (Tex.Civ.App.

- 8th Dist., 1961). Another definition of contract is an agreement between two or more persons to exchange something of value, even if one of the items exchanged is a promise to do or not do a particular act in the future.

Discuss the making of a contract, including the fact that it requires both an offer and an acceptance.

Discuss the other elements of a contract including promises, consideration, competent parties, competent subject matter, (illegal contracts) performance and breach.

Discuss the nature of contract rights, including the right to hold a seller to warranties. Discuss the various ways in which warranties may arise, including the contrast between actual warranties and simple "puffing" (defined as statements of opinion or personal taste or obvious exaggerations, which reasonable persons would know better than to rely upon as strictly truthful). Which of the following statements are warranties and which are mere puffing? "You'll love our famous hamburgers." "You'll lose ten pounds a week with our starch blocker enzyme inhibitors." "Lowest prices in town, or your money back." Review advertisements from local publications and decide whether the ads contain mere statements of opinion or obvious exaggeration, or whether they offer warranties or other factual representations which would give rise to legal rights if the representations proved untrue.

(5) Discuss the causes of action created under the Texas Deceptive Trade Practices - Consumer Protection Act for violations of the "laundry list" and "unconscionable" conduct by a seller. Propose various factual situations and have students decide whether, and in what ways, the Act may have been violated.

(6) Assume that a seller is falsely advertising prices at 50% off because his store is going out of business. Assume that his store never does go out of business, and that he regularly runs such sales at intervals for three to four years. What is the obligation of a consumer to complain about this state of affairs, and to whom might such complaints be addressed? Would there be any benefit in contacting the newspapers or magazines running such advertisement? (Others who would be able to take action might include the Federal Trade Commission or the Texas Attorney General's Office.)

(7) Under the Texas Deceptive Trade Practices - Consumer Protection Act, a consumer can file suit and recover actual damages, plus reasonable attorney's fees, plus automatic doubling of the damages incurred under $1,000 even if the seller acted innocently and in good faith in making a misleading statement. For example, in the case of Pennington v. Singleton, a seller was held liable for multiple statutory damages because of his representation that the outboard engine on a boat was "good as new" when in fact the

engine was cracked and subsequently required significant repair work. It was established without a doubt that the seller did not know that his statement was misleading and had no idea that the engine would require repairs. Should the act impose automatic multiple damages, even to a limited extent, under such facts? Why or why not? Discuss the importance of encouraging private citizens to sue to enforce their rights, the need to make sellers responsible for all of their representations and the reasons why the risk of a misrepresentation should, or should not, be placed upon a seller, as opposed to a consumer.

(8) Assume you see an ad in the paper that reads "Beautiful Microwave Oven - Only $200." You go to A-1 Appliance Store which has run the ad and encounter a salesman who says, "You don't want that oven. It's too small and doesn't have any of the latest features. But look over here at our other ovens." He then convinces you to purchase an oven costing $600. Discuss what the consumer can do to avoid this situation and what remedies are available to the consumer if he or she is unable to avoid the situation.

The scene described above is a sales technique known as "bait and switch," and is prohibited by both the Deceptive Trade Practices Act and the Federal Trade Commission. Actions which the consumer can take to protect himself when he runs across a "too good to be true" bargain include: (i) contacting the Better Business Bureau regarding the merchant's reputation, and (ii) calling the merchant prior to going to the store to see the merchandise. The success of the "bait and switch" tactic is predicated upon the consumer's presence in the store and his disappointment over the quality of the "bait." After the fact actions include: (i) filing complaints with the Better Business Bureau and/or Federal Trade Commission, (ii) contacting the merchant in an attempt to rescind the contract, keeping in mind the information provided here earlier, and (iii) if unsuccessful in the above, contacting your attorney.

Discuss the differences between that tactic and "loss leader" items or simple aggressive sales techniques.

G. Student Activities:

(1) Examine printed copies of the Texas Deceptive Trade Practices - Consumer Protection Act and discuss the nature of its provisions in a class discussion.

(2) Visit a court as a class and observe part of a jury trial involving allegations of violations of the Texas Deceptive Trade Practices - Consumer Protection Act.

(3) Ask students to analyze local television or newspaper advertising for a week and report on examples of fair and unfair advertising.

(4) Invite persons in the community to come to class to discuss the various aspects of consumer transactions and remedies. Such persons could include judges, lawyers, newspaper editors, sales representatives, local merchants, manufacturers' representatives and others. Such presentations could be followed by general class discussion. Interviews with such persons might also be taped, with permission, and later used in class.

H. Community Resource Persons:

Judges, lawyers, educators, newspaper editors and reporters, local businessmen, members of the local Chamber of Commerce, members of the local Better Business Bureau, representatives from the Consumer Protection Division of the Texas Attorney General's Office, state legislators in office since 1973 when the Act was passed, etc.

I. Vocabulary:

false, misleading or deceptive acts or practices
unconscionable acts
express warranty
implied warranty
consumer
goods
services
waiver
contract
breach of contract
remedy
common law
puffing
rescission

J. Bibliography:

By far the best source of information concerning the Texas Deceptive Trade Practices - Consumer Protection Act is Texas Consumer Litigation (2nd ed.), by David Bragg, Philip Maxwell and Joe Longley (1983). The publisher is the Texas Law Institute, Inc., P.O. Box 13537, Austin, Texas 78711. The presentation of this volume is sometimes slanted in favor of the plaintiff, but it is still the best single compilation of information concerning the Act.

Also excellent is Vol. 9 of the Texas Litigation Guide by Dorsaneo, Anderson & Winship (1977). The publisher is Matthew Bender.

Useful law review articles include:

"A Remedy for Undermade and Oversold Products - Texas Deceptive Trade Practices Act: by Michael Lynn, 7 St. Mary's L.J. 698 (1976).

"Analysis of 1979 Amendments to Deceptive Trade Practices Act," by Robert Goodfriend and Michael Lynn, 33 Southwestern L.J. 952 (1979).

"Anatomy of a Deceptive Trade Practices Case" by Michael Lynn, 31 Southwestern L.J. 867 (1977).

"1979 Amendments to Deceptive Trade Practices - Consumer Protection Act" by Michael Curry, 32 Baylor L. Rev. 51 (1980).

A further list of law review articles can be found in Vol. 9 of the Texas Litigation Guide and behind each section of the Deceptive Trade Practices Act.

A discussion of the Act which is still accurate at the present time is provided in the Texas Young Lawyers Association Videotape on the Texas Deceptive Trade Practices Act.

Part of a curriculum series, Young Consumers, is designed for students in grades 5-8. It includes acts on advertising, contracts, small claims courts and other consumer issues. West Publishing Co., 1980.

Topic Packet VII.

CONSUMER LAW - LANDLORD & TENANT

Materials prepared by: David H. Donaldson, Jr.

NOTE: [To Visiting Speaker] Please remember to provide a copy of this entire topic packet, the Introduction section of this book, and the Handbook Of Strategies (Appendix to this book) to the teacher of the class you will be visiting. It is best, if possible, to provide these materials to the teacher in advance of your visit to the class.

At the time of your visit please deliver to the teacher a copy of the Directory of LRE Projects which appears at the back of this book.

CONSUMER LAW - LANDLORD & TENANT

I. MATERIALS FOR LAWYER-SPEAKER

A. Statement of Purpose and Goals:

To make students aware of landlord-tenant relationship and the rights and obligations each party has, including an explanation of the lease, the term of the lease, notice of termination under a lease, security deposits, subletting, warranties, repairs and remedies for non-repair, changing the locks, the landlord's lien and exemption property, and the eviction process.

B. Briefing Materials (see Section II, below).

C. Practical Suggestions:

(1) Read and review the Introduction to this Handbook.

(2) Read and review the section of this Handbook which appears immediately after the Introduction, and which is entitled: "Practical Suggestions for Visiting Speakers - Do's & Don'ts: Tips on How to Communicate Effectively."

(3) (a) Begin the presentation with a ten question pre-test to determine students level of knowledge. Students should actually write the answers down and can check them during the presentation. Sample questions might include:

TRUE-FALSE

1. A lease is always written.
2. A security deposit is automatically applied to the last month's rent.
3. A landlord must consent to subletting.
4. Tenants can withhold paying rent if needed repairs have not been met.
5. Landlords can lockout tenants who fail to pay the rent.

(b) Reproduce copies of a sample lease to show students.

II. BRIEFING OR BACKGROUND MATERIALS FOR VISITING SPEAKER AND FOR TEACHER

NOTE: These materials are based upon and were adapted from the State Bar of Texas pamphlet entitled The Landlord Tenant Relationship.

The Lease: The landlord-tenant relationship is created by an agreement between the property owner and the prospective tenant or tenants. This agreement is generally known as a lease. The agreement can be either oral or written. The lease can be executed and is considered binding if the tenant is 18 years old.

Term of the Lease: The lease term is the period of time that the tenancy will last. If the lease does not set out any specific term, but does provide for a monthly rent, the lease will have a month-to-month term. A month-to-month lease is one that provides for consecutive monthly terms.

Notice of Termination: A lease typically will provide for some form of notice of termination, usually in writing. If the lease does not make provisions for notice of termination, Texas law provides a notice period. Month-to-month leases may be terminated with one month's notice. On leases providing for more frequent rent payments, the notice is sufficient if equal to the time between payments. For example, if tenants pay rent weekly and the lease has no notice provision, one week's notice is sufficient. If the notice set by law falls between rent periods, the tenant is responsible for paying rent up to the date of termination. For example, if the rent is to be paid on the 1st of each month and the tenants give notice of termination on the 15th, the tenants are only responsible for rent through the 15th of the next month. The landlord should prorate the rent.

Security Deposit: Almost all leases require that the tenants, before moving in, pay the landlord a sum of money to be held as security against unpaid rent or damage to the premises.

A special Texas Security Deposit Law, which cannot be waived, requires the landlord to return the tenant's security deposit within 30 days after they deliver the premises back. If the landlord keeps all or part of the tenant's deposit, claiming unpaid rent or damage to the premises, he must furnish to them, also within 30 days, a list describing all of the deductions.

If the landlord neither returns the deposit nor sends the tenant the list of charges and damages within 30 days, he will also have the burden of proving that he was not acting in bad faith and may lose the right to make any deductions from the deposit. If the court finds that he was acting in bad faith, the tenants may recover $100 plus three times the amount of the security deposit improperly withheld, plus reasonable attorney's fees--in addition, he may lose the right to recover charges and damages against the tenant. However, if the court finds that the landlord was wrong but not acting in bad faith, the tenant would only be entitled to recover the amount wrongfully withheld plus court costs.

To benefit from this security deposit law, the tenants must give the landlord a written notice of their forwarding address when they move out, and they must live up to all of their obligations under the lease.

The tenants may not refuse to pay all or part of the last month's rent by telling the landlord to apply their security deposit to what they owe. If they do, they may be liable to the landlord for penalties and attorney's fees.

Rent: The lease should clearly set out the amount of rent. The lease should set out what date the rent is due, where it is to be paid, and may provide for penalties for late payment.

Subletting: Subletting occurs when the tenant moves out of the property and rents the property to another person. The third tenant pays rent to the original tenant who continues to pay rent to the landlord for the term of the lease. Texas law provides that there can be no subletting without the landlord's consent. Of course, like most other provisions, the lease can vary this law and eliminate the requirement of the landlord's consent.

Warranties: Texas law provides that when there is no contrary lease provision in the rental of a dwelling unit, there is an "implied warranty of habitability." This means that even if the landlord does not actually say that the property is in livable condition, the law will imply from his renting the property that he is guaranteeing that there are no hidden defects in the property that are vital to the use of the property as a residence. The lease can exclude this warranty.

Repairs and Remedies for Non-Repair: Generally, unless otherwise agreed by the parties, the landlord has no duty to repair the rented property. Recently, however, a law was passed requiring the landlord, upon notice, to make diligent effort to repair any condition "which materially affects the physical health or safety of an ordinary tenant." This duty does not extend to any conditions caused by the tenants, their family or guests, but does include conditions caused by normal wear and tear. The law does not require him to repair conditions that do not materially affect the health or safety of an ordinary tenant. These remain the duty of the tenants.

Texas law provides that the tenant's obligation to pay rent and the landlord's obligation to repair are independent of one another. In other words, tenants cannot withhold rent if they feel needed repairs have not been made. If the landlord fails to make repairs of those conditions which materially affect the physical health or safety of an ordinary tenant, the law provides several remedies for the tenant. After a reasonable period of time to make the needed repairs, tenants can give written notice that they will terminate the lease if the condition is not remedied in seven (7) days. In case of termination, the tenants would be entitled to a refund of any rent already paid for the period after the move-out date and their security deposit.

The law also provides judicial remedies for tenants occupying premises requiring repairs "which materially affect the physical health or safety of an ordinary tenant" as described above. Tenants may give notice that they intend to file suit if the conditions are not remedied within seven (7) days. The court could order the landlord to make the needed repairs, order the rent reduced, impose an penalty of one month's rent plus $100, award money damages to the tenant, and assess him court costs and attorney's fees.

Eligibility to Invoke Remedies: Before tenants can avail themselves of any of the remedies outlined above they must give notice of their complaint at the place where they pay the rent; they must be current on their rent; the condition complained of must materially affect the physical health or safety of the ordinary tenant; the landlord must have failed to make diligent effort to repair; and the landlord must have had a reasonable time after notice to repair, considering the nature of the problem and availability of labor and materials for repair.

The law provides that if the tenants avail themselves of any of these remedies, that the landlord may not retaliate. For a period of six (6) months, any notices of termination or eviction suits will be closely scrutinized. Further, the landlord cannot decrease services to the tenant. Penalties may also be imposed against a tenant for retaliation. If the tenant, after written notice of the possible penalties, withholds payment of any portion of the rent due in retaliation for a supposed failure to repair conditions complained of, the landlord may recover a penalty from the tenant of one month's rent and $100.

In any lawsuit brought under these laws providing for repair, the winning party may recover attorney's fees. Either party may recover penalties from the other for suits brought merely for harassment.

Changing the Locks--"Lock Out": When tenants become delinquent in their rent, the landlord cannot lock them out of their apartment without complying with certain requirements. If the landlord changes the locks, he must leave written notice on the tenant's front door describing where the tenant may obtain a new key at any hour and the name of the person who will provide the key. That person must give the tenant a new key regardless of whether or not the rent delinquency is paid. Failure to strictly follow the above procedure can result in a recovery against the landlord of the tenant's actual damages, one month's rent, reasonable attorney's fees and costs of court, less the amount of any delinquent rentals owed by the tenant. The tenant cannot waive or give up this right not to be locked out; therefore, any waiver provision in a lease would be invalid.

The landlord is also barred by law from interrupting utilities that the tenant has paid for directly with the utility company.

The Landlord's Lien: If tenants become delinquent in their rent, the landlord can have a lien on some of the tenants' property. This means that he can seize the property and hold it for the rent owed. The following property cannot be seized:

(1) all clothes,
(2) all tools, and books for trade or profession,
(3) school books,
(4) one automobile and one truck,
(5) family library and all family portraits and pictures,
(6) one couch, two living room chairs, dining tables and chairs,
(7) all beds and bedding,
(8) all kitchen furniture and utensils,
(9) food,
(10) medicine,
(11) agricultural implements.

Further, you cannot seize property that belongs to someone other than the tenants or items that are mortgaged.

This contractual landlord's lien must be printed on the lease and be underlined or be printed in conspicuous bold print. If there is no written agreement, the landlord cannot use this remedy. None of the protections of this law can be waived by the parties. The landlord's violation of the lien law can result in an award of damages to the tenants including attorney's fees.

The Eviction Process: Sometime, usually for failure to pay rent, a landlord may have to evict a tenant.

He cannot personally evict a tenant--he must seek and obtain a court order, which may be enforced only by a constable or sheriff. For a court to order the eviction, the following steps must occur:

(1) The landlord must first give the tenants a written "notice to vacate," demanding that the tenants leave the apartment or house within a specified time.

(2) If they refuse to vacate, the landlord must go to a justice of the peace court and file a lawsuit against the tenants, asking the judge to order their eviction.

(3) The court must serve the tenants with an official notice telling them when the court hearing will take place.

(4) At the court hearing, both sides will have the right to present their side of the case, including witnesses, receipts, cancelled checks, photographs, and all other evidence.

If the landlord wins in the justice of the peace court and there is no appeal filed, the tenants will have at least five (5) days after the court enters its order of eviction before the constable or sheriff comes to evict them.

As was noted earlier, the landlord may not lock the tenants out, even after the eviction hearing. When the time alloted has expired, the sheriff will move the tenants out if necessary. The tenants can appeal to the county court if they lose.

III. MATERIALS FOR TEACHER

A. When and Where to use this Unit:

1. While teaching about leasing or landlords and tenants or laws that affect the students in courses dealing with government, civics, history, or business law.

2. Suggestion: Use this as a special program during Law Week (May).

B. Behavioral/Instructional Objectives:

After completing this unit, students will be able to:

1. Define what landlords and tenants are and what is a lease.

2. Know that a tenant must give notice of termination.

3. Explain that a tenant is entitled to a return of a security deposit absent unpaid rent or damages and may have legal remedies if the deposit is not returned.

4. Know that a tenant can demand that the landlord repair conditions that materially affect his physical health or safety.

5. Know that a tenant and landlord cannot retaliate against each other.

6. Explain that a landlord cannot lock a tenant out of an apartment without a court's order of eviction.

7. Know that a landlord may have a lien on some of the tenant's property to secure payment of delinquent rent.

8. Describe eviction as only occurring through a legal process.

C. Suggested Videotapes: Consumer Law Series: Landlord/Tenant

Contact: Texas Young Lawyers Association
Law-Related Education
P.O. Box 12487
Austin, Texas 78711
Phone: (512) 475-1234

D. Suggested Pamphlets from the State Bar of Texas: The Landlord-Tenant Relationship

E. Background Materials for Teacher: (See Section II, above)

F. General Discussion, Debate Issues:

1. Do you think that the state should not have laws affecting the landlord-tenant relationship and leave lease agreements as strictly a contractual arrangement between the parties? Why or why not?

2. Do you think that a tenant should be allowed to refuse to pay rent if conditions are not repaired, instead of just terminating the lease and moving out if repairs are not done? Why or why not?

3. Do you think tenants should be allowed to recover their attorneys' fees for landlord law violations? Should the landlord be able to recover his attorneys' fees from the tenant if the landlord is right?

4. Why should a landlord have any say over who a tenant may sublet to as long as the tenant makes sure the rent is paid?

5. Should a landlord be allowed to exclude warranties of habitability? Does it make any difference since the law requires him to repair conditions that "materially affect the physical health or safety of the tenant"?

6. Why should a landlord be required to go to court to evict a tenant who won't leave?

G. Student Activities:

1. Examine and conduct a class discussion on the Texas law, especially concerning the landlord-tenant relationship. Those laws include:

   Texas Property Code § 91.001 - Notice for terminating certain tenancies

   Texas Property Code § 92.003 - Landlord's Agent for Service of Process

   Texas Property Code § 91.002 - Willful Interruption of Utilities and Willful Exclusion by Landlord

   Texas Property Code §§ 54.041 - .045 - Landlord's Lien for Rent

   Texas Property Code §§ 92.001 - 92.109 - Security deposits; minimum age for entering into rental agreements; rights and duties of landlord and tenant

   Texas Property Code § 91.003 - Termination of lease by landlord

   Texas Property Code §§ 92.001, 92.004 - .006, 92.151 - .159 - Security devices; landlord's duty to install, change, or rekey on dwelling units

   Texas Property Code §§ 92.001, 92.004 - .007, 92.201 - .208 - Disclosure of ownership and management of dwelling unit by landlord to tenant

   Texas Property Code §§ 92.001, 92.251 - .262, 91.007 - Smoke detectors in dwelling units

2. Examine copies of a lease by landlord and hold a class discussion on its provisions.

3. Examine copies of a letter giving notice of termination, a letter giving a tenant's intention to terminate the lease if a condition affecting the material health and safety of the tenant is not remedied in seven (7) days, a letter giving tenants a notice to vacate, a petition asking the Justice of the Peace to order the tenants' eviction, and the court's notice of the filing of the suit and the date and time of the hearing.

4. Go to court as a class and attend a trial involving landlord-tenant problems.

5. Stage a mock trial involving a landlord-tenant dispute.

6. Visit an apartment complex and obtain a role-playing demonstration with the property manager of the process of entering into a lease agreement for an apartment unit.

H. Community Resource Persons:

Judges, lawyers, property managers, tenant's associations, individual tenants or landlords.

I. Vocabulary:

landlord
tenant
security deposit
subletting
Notice of termination
implied warranty of habitability
duty to repair
eviction
landlord's lien

J. Bibliography:

Pamphlet - State Bar of Texas, The Landlord-Tenant Relationship.
TYLA, How to Sue in Small Claims Court.

Videotape - State Bar of Texas, CONSUMER LAW SERIES: LANDLORD/TENANT.

Texas Revised Civil Statutes, Article 5236 et seq.

Topic Packet VIII.

DRUG ABUSE

Materials prepared by: Charles E. Hampton and Professor Michael (Mike) Rosenthal

NOTE: [To Visiting Speaker] Please remember to provide a copy of this entire topic packet, the Introduction section of this book, and the Handbook Of Strategies (Appendix to this book) to the teacher of the class you will be visiting. It is best, if possible, to provide these materials to the teacher in advance of your visit to the class.

At the time of your visit please deliver to the teacher a copy of the Directory of LRE Projects which appears at the back of this book.

DRUG ABUSE

I. MATERIALS FOR LAWYER-SPEAKER

A. Statement of Purpose and Goals:

To make students aware that drug abuse is the nonmedical use of chemical substances for their mood-altering effects; to make students aware that there are state and federal laws on drug abuse, called Controlled Substances Acts, that list in different schedules the controlled substances according to how dangerous they are believed to be; to make students aware that the nonmedical distribution, use or possession of controlled substances is a criminal offense; to make students aware that alcohol abuse is a form of drug abuse; to help students understand how the decision to declare a substance controlled is made because the substance is determined to be dangerous to the user or to those around him, as well as because of the societal moral judgment that drug abuse destroys free will; to make students aware that juvenile drug offenders are handled through the juvenile justice system; to inform students that the Texas Family Code provides for special juvenile courts that are different from adult courts; and to make student aware of certain aspects of the Texas juvenile justice system.

B. Briefing Materials (see Section II, below).

C. Practical Suggestions:

(1) Read and review the Introduction to this Handbook.

(2) Read and review the section of this Handbook which appears immediately after the Introduction, and which is entitled: "Practical Suggestions for Visiting Speakers - Do's & Don'ts: Tips on How to Communicate Effectively."

(3) Begin the classroom presentation by asking students to discuss whether drug laws should be decriminalized?

a. Ask students who think drug laws are too tough to stand on one side or room. Ask students who feel that the laws and punishments are appropriate to stand in the center. Ask students who are for tougher penalties for drug use to move to opposite sides.

b. Break each group into subgroups of no more than 5 students. Ask them to discuss and get five recommendations they would make to a Governor's Task Force to change drug laws. Groups have 10 minutes to report back.

c. As you listen to the group presentation, clarify what the law is based on information in this packet. Elaborate on points that interest students.

II. BRIEFING OR BACKGROUND MATERIALS FOR VISITING SPEAKER AND FOR TEACHER

NOTE: These materials were synthesized from the 1979 article "Drugs of Abuse" as distributed by the Drug Enforcement Administration of the United States Department of Justice; Title 3 of the Texas Family Code and the commentary on Title 3 by Professor Robert Dawson, Delinquent Children and Children In Need of Supervision, 5 Tex. Tech L. Rev. 509 (1974); the State Bar of Texas publication Juveniles and the Law; The 1979 Annual Juvenile Probation Report; and interviews with officials of the Travis County Juvenile Probation Department.

Introduction:

The laws on drug abuse arose because legislators perceived a need to control the use of powerful mood-altering medicines. A "drug" is defined broadly as any substance used as a medicine or in the composition of medicine for internal use. A "drug" possesses, or is asserted to possess, curative or remedial properties. People abuse drugs when they use them without medical authorization and in a manner that creates an unacceptable risk of harm to themselves, others, or society. Drug abuse occurs when someone takes a drug for the "high" experience it produces, without regard to the medical need for the drug or the dangerous side effects, or direct effects, the drug may have.

Drug Law Enforcement:

Drug law evolved to control the use of dangerous drugs, but drugs were not the only substances subject to abuse. Chemicals with no actual or claimed medicinal value were taken for their effects by drug abusers.

What we generally call drug laws today are statutes and regulations to control the use of certain chemical substances. The substances need not be drugs in the medical sense. Any substance that possesses mood-altering properties and the potential for abuse may be controlled through the drug laws.

The most important federal drug statutes are in Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970. Title II is commonly known as the Controlled Substances Act. In this Act, Congress did not try to list all the chemicals it wanted controlled. Congress also did not try to give a single definition that covered all substances that should be controlled. Rather, Congress defined (by characteristics they posses) five categories of substances to be controlled. The categories correspond to five schedules or lists of substances. Congress set the criteria (or standards) by which substances are scheduled as dangerous. The schedules are roughly in order of the perceived danger in the drug, with schedule V containing more or less the least dangerous controlled substances, and schedule I containing the most dangerous. (Actually, the main difference between schedule I and schedule II is that schedule I substances do not have any currently recognized medical use in treatment. Thus some schedule II drugs may be more "dangerous" than some schedule I drugs.)

Congress delegated to an administrative agency -- the Drug Enforcement Administration (or DEA) -- the task of determining whether a particular chemical or substance had the characteristics requiring some level of control. In other words, the DEA, with some administrative restrictions and limitations by the Department of Health and Human Services (HHS, formerly Health, Education and Welfare, or HEW), decides which particular substances are on each of the five schedules of controlled substances. The schedules are published in the Federal Register. For trafficking in or possessing a particular controlled substance to be an offense under the Act, the substance must be or contain one of the substances actually scheduled in one of the five schedules.

For a substance to be scheduled, someone must initiate the process of deciding to put it on the list. There must be a suggestion to the DEA that the substance should be controlled. The scheduling proceedings may be initiated by the DEA itself, or by the HHS. If the proceedings are not begun internally, any interested person may file a formal suggestion, called a petition, to have the drug controlled. Interested persons entitled to file a petition include the manufacturer of a drug, a medical society or association, a pharmacy association, a public interest group concerned with drug abuse, a state or local government agency, or an individual citizen.

Filing the petition does not automatically make the drug illegal. There must be an investigation and administrative hearing. The DEA must investigate the drug. The HHS must make a scientific and medical evaluation and recommendations. There must be a final hearing. Interested persons may participate in the hearing and investigation. DEA then makes the decision whether to schedule a substance and on which schedule. Persons dissatisfied with this final decision may challenge the order in the federal appellate courts.

Marihuana, cocaine, heroin, LSD, and all the other substances we commonly think of as illegal drugs, are scheduled under the federal law. They are controlled substances.

Texas Drug Laws:

The most important state drug law is the Texas Controlled Substances Act. It is codified as Article 4476-15 of the Texas Revised Civil Statutes. The Texas Controlled Substances Act uses a combination of administrative scheduling and statutory listing of controlled substances. There are five schedules in the statute that list the initial controlled substances within each schedule. Based on standards defined in the Act, the statute gives the Health Commissioner -- with the approval of the State Board of Health -- the power to add substances to, or delete or reschedule any substance enumerated in schedules I through V. The state statute also lists certain substances in four "penalty groups" that are fixed in the statute itself. The listings in the penalty groups include some definitional aspects. There are special provisions for violations involving marihuana. The marihuana provisions vary according to the quantity possessed or delivered, the age of the known or anticipated ultimate recipient, and other factors.

Alcohol Abuse:

The approach of the drug statutes, whether state or federal, is to make the nonmedical distribution, use or possession of drugs a criminal offense. This makes the controlled substances drug abuse laws different from the laws dealing with alcohol. Alcohol is also a drug subject to abuse. Significant restrictions are placed on the sale of alcoholic beverages. The seller must be licensed. Sales to persons under the age of 19 are prohibited. Sales are limited to certain hours and certain approved locations. The sale of alcoholic beverages is heavily taxed. Conduct occurring after alcohol abuse, such as driving while intoxicated, is illegal. But nonmedical possession or use of alcohol without more is not a criminal offense.

Alcohol abuse is such a broad topic with additional legal, social and medical considerations different from abuse of other drugs that it is the subject of another informational packet prepared through the Texas Young Lawyers Association (see Topic IX). Considered as a subtopic of drug abuse, however, alcohol abuse involves many of the same considerations that lead persons to make that first decision to use a drug for nonmedical purposes.

Why Regulate Drug Abuse?

The law-making body, whether Congress and the DEA or the Texas Legislature, decides to make the nonmedical distribution and use of a drug illegal because it decides the drug is dangerous to the user or to others who may come in contact with or be affected by the user. The risk to the individual user is usually the risk to physical health. There may also be a danger to mental health. The perceived danger to others may be on the individual level or a societal level. For example, on the individual level a person out of control from the use of a hallucinogenic or stimulant drug may endanger anyone near to him. On the societal level, the costs may be loss of productivity from workers impaired by drug abuse. The societal and individual dangers may coincide in drug-related crime: When an addict must steal or commit other crimes to support his habit, there is danger to the individual victim of his crime and cost to society as a whole. Society as a whole must bear the cost of attempting to prevent or control the drug-related crime.

Official DEA publications include examples of this concern for danger to self and others. One such example comes from a DEA discussion of addiction to narcotics. Narcotics include three types of drugs: (1) opium from the opium poppy; (2) derivatives of opium; and (3) synthetic substitutes for opium derivatives. Heroin is an example of a narcotic drug. Narcotics are considered highly addicting. The DEA states:

> Since addicts tend to become preoccupied with the daily round of obtaining and taking drugs, they often neglect themselves and may suffer from malnutrition, infections, and unattended diseases or injuries. Among the hazards of narcotic addiction are toxic reactions to contaminants. . . as well as unsterile needles and injection techniques, resulting in abscesses, blood poisoning and hepatitis.

The DEA publication includes concerns for danger to others when it describes abuse of amphetamines (or "uppers") by describing the

> "speed freaks," who injected them [uppers], [and] won notoriety in the drug culture for their bizarre and often violent behavior.

There is a moral overtone to all drug laws. American society deplores the loss of capacity to make rational decisions believed to be caused by some drugs. Drug addiction is a long-term example of this loss of control. As a society we hold the moral belief that individuals should be able to control their actions. American society values free will.

What Happens if You Violate Drug Abuse Laws?

Many of the criminal penalties for violating drug laws are very severe. These penalties do not apply to most school-age persons. Most criminal violations by persons under the age of 17 are handled in our state's juvenile court system. One may ask the question: What can happen to a young drug abuser, and what is likely to happen, in the juvenile court system?

A juvenile is a person between the ages of 10 and 17. A person is also subject to the juvenile justice system if he is 17 years old and is accused of having committed the offending conduct when he was under 17 years of age. The general laws dealing with juveniles are in Title 3 of the Texas Family Code. The courts and law enforcement agencies have special procedures to follow in handling juveniles who get in trouble with the law or who need special help. The juvenile court is the place many decisions are made.

A juvenile court is a special court created by law to handle juvenile proceedings. A juvenile court is part of the district court in most counties. In some of the larger Texas counties, there are Family District Courts that hear juvenile matters and function as the juvenile courts for those counties.

A child under 10 years of age is not subject to the jurisdiction of juvenile court to answer for drug abuse. He may be referred to some other agency for disposition, such as the Department of Human Resources. The DHR is empowered under Title 2 of the Texas Family Code to take action to protect young children.

The juvenile court has authority over proceedings involving persons between the ages of 14 and 17 and always hears cases involving children between the ages of 10 and 14. There is a possibility that a person over 15 years of age may enter the adult criminal justice process and be punished as an adult if he commits a very serious crime. This process by which the juvenile may be tried as an adult is called "certification." But before considering how juvenile court proceedings and certification might work, let us take an overall look at the juvenile justice system. Eventually our goal is to trace a drug offense from the time of the offending conduct to the final disposition in the juvenile justice system.

Movement of Children Through the Juvenile Justice System:

Persons Subject to the System

The person must be a juvenile as previously defined and must have been a person between the ages of 10 and 17 at the time of the alleged unlawful conduct. To avoid labeling a child with the stigma of criminality, such terms as "delinquent child" or "child in need of supervision" are not used in Title 3 of the Texas Family Code. Instead the child's behavior is labeled either "delinquent conduct" or "conduct indicating a need for supervision."

Delinquent conduct is conduct by a juvenile which, if committed by an adult, would be a felony, or a misdemeanor punishable by a jail sentence, or which is in violation of a juvenile court order in a previous case (such as violation of probation terms). Virtually all drug abuse in violation of the Texas Controlled Substances Act is delinquent conduct.

Conduct indicating a need for supervision includes truancy, running away, misdemeanors punishable by a fine only if committed three or more times, and the drug-abuse conduct of driving while intoxicated (DWI) or driving under the influence of drugs (DUID). Perjury and traffic violations (except DWI and DUID) are specifically excluded from the original jurisdiction of the juvenile court.

Rights of Juveniles

Juveniles are entitled to most of the constitutional rights afforded adults. These include the right to counsel, the right to be notified of the charges, the right to a jury trial, the right to be confronted by witnesses and the right of habeas corpus. Constitutional rights also guarantee protection against unreasonable searches and seizures, against double jeopardy, and against self-incrimination. Pre-hearing bail is not available in a juvenile court. There is no indictment by a grand jury, even for offenses that would be felonies if committed by an adult. The court may allow the juvenile to waive his rights if the judge feels that the child and his attorney understand them and the consequences of waiving them.

Taking a Juvenile into Custody

Most juveniles are referred to the juvenile court by law enforcement officials. Referrals may also come from probation officers, schools, social agencies, or relatives. Though concrete statistical data are not published, it seems likely that drug abuse referrals originate very seldom from parents.

Title 3 of the Texas Family Code requires specific procedures for taking a juvenile into custody (paralleling arrest for the adult system) and for any subsequent referral to juvenile court. The "arresting" officer presents the first opportunity for diversion of the drug abuse juvenile. Instead of taking a child into custody, the police officer may decide to issue a warning notice (which results in no further action for that particular offense).

Guidelines for the issuing of such notices must be approved by the juvenile court. These guidelines also include information such as locations where juveniles may be taken after being taken into custody and procedures for obtaining court approval for any diversionary programs to which the police may refer the juvenile. These guidelines vary widely throughout the various jurisdictions in the state.

Once a juvenile is taken into custody, the officer has several options: (1) to release the juvenile to the parents with their promise to bring the child to court when requested; (2) to take the child directly to the intake officer of the juvenile court; (3) to take the child to a detention facility (the juvenile equivalent of a jail) or to a medical facility, if necessary; or (4) to dispose of the case without a referral to juvenile court. This last option, as in the case of issuing a warning notice, must be carried out under approved guidelines. Such disposition may be a referral of the juvenile to a social agency, or simply a conference with the child and his parents. The practice varies from county to county and, subject only to the guidelines, a considerable amount of police discretion is involved.

If the child is taken into custody, and the case is referred to a juvenile court, the law enforcement official prepares a report with information about the juvenile and the offense. The official report is used by the juvenile court in further proceedings.

Police booking procedures for juveniles are different from those for adults. No juvenile may be fingerprinted or photographed except under certain circumstances or with the consent of the court. The court is to protect the juvenile in these initial proceedings. When fingerprints and photographs are taken, they must be kept separate from adult records and must not be sent to a central state or federal agency. If the case is dismissed at any point, all fingerprints and photographs must be destroyed.

The Family Code provides more stringent requirements for written confessions of juveniles to be admissible. The written confession requirements are more stringent than those for adults. There are special rules for oral confessions and other oral statements that are similar to the rules for adult cases.

Access to files and records of juveniles is limited by specific provisions in Title 3 of the Texas Family Code to specific court-approved agencies and to attorneys involved in the case. Juvenile court proceedings are open to the public only in the juvenile court judge's discretion.

The confidentiality of the juvenile's record before the juvenile court may continue after he leaves the juvenile justice system (as by being discharged or attaining the age of 18). The Texas Family Code provides that the juvenile must be given a written explanation of the record sealing provisions at whatever point he leaves the system. The sealing provisions allow the person to ask the court to have all records at every level sealed. But sealing of records is not an automatic process. If a person applies to have records sealed, the court must hold a hearing to determine that the person has not been in trouble again and that it is unlikely that he will engage in delinquent conduct or conduct indicating a need for supervision in the future. The juvenile court may also seal the records on its own motion.

Court Intake

Referral to juvenile court requires that a preliminary investigation be made by an official of the court. The investigation is most often conducted by an intake probation officer. If the conclusion of the investigation is that there is no probable cause to believe that the child has engaged in delinquent conduct or conduct indicating a need for supervision, the case is dismissed. If the investigation shows that there is probable cause and the intake worker decides formal court proceedings are necessary, a petition for adjudication is prepared by the prosecuting attorney. When a case is a minor's first offense, it is common for the intake officer to simply issue a warning notice or to refer the juvenile to another agency, just as the police do in similar cases. In drug abuse cases it is common to refer the juveniles to various drug treatment centers approved by the juvenile court. The drug treatment center may be private or publicly funded. The intake officer decides to which type of treatment center the juvenile will be assigned. The officer typically makes the decision based on the financial capability of the child's parents and the needs of the child. The referral to the other agency occurs just as police make such referrals in similar cases, according to the guidelines approved by the local court. If the intake officer decides it is appropriate supervision, he may work with the juvenile and his or her parents for a period of up to six months. This procedure for working up a voluntary rehabilitation program with the parents is one type of informal adjustment.

Detention Hearing

Even if the intake officer has determined that a petition for adjudication of delinquent conduct shall be filed, the intake officer must release a child who is in detention from detention unless one or more of the following conditions is present:

(1) the juvenile is likely to abscond or be removed from the jurisdiction of the court;

(2) suitable supervision, care, or protection for him is not being provided by a parent, guardian, custodian, or other person;

(3) he has no parent, guardian, custodian, or other person able to return him to the court when required;

(4) he is accused of committing a felony offense and may be dangerous to himself or others if released; or

(5) he has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term in jail or prison and is likely to commit an offense if released.

If the juvenile is not released by the intake officer, a request is made for a detention hearing before the court to determine if detention is necessary. A detention hearing must be held promptly. The detention hearing must be held not later than the second working day after the juvenile is taken into custody, or the first working day if the juvenile is placed in detention over a weekend. The statute provides some protection

for the juvenile to have the opportunity for attorney representation. To keep the juvenile in detention, the juvenile court must specifically find one or more of the five conditions listed above. If the court decides to keep the juvenile in detention, additional detention hearings must be held every 10 days until disposition of the case unless such further hearings are waived by the juvenile and his attorney.

Detention

It is the duty of the county commissioners of the particular county to provide appropriate juvenile detention facilities. All metropolitan areas have separate juvenile detention facilities. Some less populous counties use a portion of the county jail to detain juveniles. The Texas Family Code provides that juveniles detained in a county jail be kept separate from adults, and that the jail meet the "safe and suitable" standards of Texas law. The county may purchase detention services from private agencies. The type and quality of the detention facilities vary widely across the state.

The 1979 statistics for juvenile detentions provide some indication that detention, when it occurs, is brief. In 44 percent of the cases, the length of detention was less than 24 hours. In less than 10 percent of the detention cases did the detention last more than 10 days. Detention occurred in over 21,000 reported juvenile cases.

Transfer Hearing

The juvenile court may transfer a child to district or criminal district court for trial as an adult if: (1) the alleged offense is a felony; (2) the juvenile was 15 or older at the time of the alleged commission of the offense; (3) no adjudication hearing has been held by the juvenile court; and (4) after full investigation and hearing the juvenile court finds that because of the seriousness of the offense or the background of the child, the welfare of the community requires criminal proceedings. In making the decision whether to certify the juvenile for trial as an adult, the Family Code directs the juvenile court to consider six factors:

(1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;

(2) whether the alleged offense was committed in an aggressive and premeditated manner;

(3) whether there is evidence on which a grand jury may be expected to return an indictment;

(4) the sophistication and maturity of the child;

(5) the record and previous history of the child;

(6) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

Since drug abuse offenses are not offenses against the person of another and normally are not committed in an aggressive manner, it may be unlikely that a juvenile would be certified for trial as an adult for a drug abuse violation. The courts have held, however, that it is not necessary for each of the factors to be established. The court must merely consider all the factors and if one or more factors are present, the court may certify the child for trial as an adult. For a serious offense such as dealing in drugs, certification is a possibility.

Incidentally, when the juvenile turns 18, the juvenile court loses jurisdiction. The person goes "free." From this one might conclude it would be best to hide the offense or dodge the police until one reaches 18. Not so. A special provision of the Texas Family Code allows the juvenile court to certify for trial as an adult a person who is 18 years or older who is alleged to have committed a felony offense when he was between 15 and 17, but who was not brought before the juvenile court because the evidence to support probable cause that the offense was committed was not found until after the 18th birthday or the person could not be found until after the person's 18th birthday.

It is customarily the district attorney for the district in which the juvenile court resides who moves for the certification of the juvenile for trial as an adult. If such a certification is made, the case is transferred to an appropriate district or criminal district court and the subsequent trial is conducted in exactly the same manner as for adults. If the case is transferred, but the grand jury does not present an indictment, the juvenile court resumes jurisdiction of the case.

Adjudication Hearing

If a petition for adjudication is filed by the prosecuting attorney, there must be a hearing to determine whether the juvenile has engaged in delinquent conduct or conduct indicating a need for supervision. A time is set for the adjudication hearing, which is similar to the trial in adult cases. The hearing must be held within 10 days after the petition is filed if the juvenile is in detention, unless this requirement is waived by the juvenile and his attorney.

A parent, guardian, or guardian ad litem must be present at the adjudication hearing. The case is tried before a jury unless a jury is waived by the juvenile and his attorney; however, in actual practice the right to a jury trial is usually waived. The child is presumed innocent. The prosecutor must prove beyond a reasonable doubt that the child has engaged in delinquent conduct or in conduct indicating a need for supervision. Jury verdicts must be unanimous, as in an adult criminal case.

The decision whether the juvenile in fact committed the act or engaged in the conduct is decided by the judge or jury, whichever the fact finder may be. If it is found that the child engaged in delinquent conduct or in conduct indicating a need for supervision, the court sets a disposition hearing, unless the court determines that no disposition is necessary.

In 1979, 4.5 percent of the referrals to juvenile authorities were for drug abuse under the Controlled Substances Act. That type of drug abuse accounted for 3,425 referrals. Also, of referrals for conduct indicating a

need for supervision, 4.4 percent were for possession of alcohol (an indication of alcohol abuse) and 1.7 percent were for inhalant abuse (abuse of glue or paint by sniffing the fumes for the "high" effect). Thus alcohol and inhalant abuse accounted for 3,328 and 1,298 referrals, respectively.

Disposition Hearing and Disposition

The disposition hearing is comparable to sentencing or punishment determination phase of an adult criminal case. Unlike adult cases, however, the jury plays no role in determining the disposition of the juvenile. The judge alone decides.

At the disposition hearing the juvenile must be represented by an attorney. A sufficient time interval is set between the adjudication hearing and the disposition hearing to allow the judge to study reports on the child, for the probation officers to make further investigations and reports, and for the juvenile's attorney to prepare disposition plans to suggest to the court. This is the most common practice, but it is not invariably followed. Sometimes the disposition hearing follows the adjudication hearing immediately. This often occurs in small communities where personnel are not available to make a study or in cases in which the judge knows enough about the child and the family situation to make an immediate decision.

Even if the judge or jury has found the child committed the alleged offense, the court may find that no rehabilitation of the juvenile or protection of the public is needed. If the court reaches this conclusion, it may make no disposition of the case.

Because the juvenile court has the "no disposition" option, the prosecutor must prove not only that the juvenile committed an act of delinquency or indicating need for supervision, but also that a disposition should be made. If the juvenile is found to have committed an act of delinquent conduct, and the prosecution proves a need for a disposition, the court has only two options: probation or commitment to the Texas Youth Commission.

Probation is the conditional suspension of a sentence that would otherwise include detention. The conditions of the probation are the terms the juvenile must abide by to avoid detention. Violation of probation is itself delinquent conduct, for which the youth may be committed to the Texas Youth Commission.

If the disposition of the court is to set the child on probation, the youth may be placed on probation at home, or with a relative or in a foster home or agency. Agencies may be public or private. Private agencies such as boys and girls ranches, halfway houses, and group homes provide a great service to the state in this function. Probation is supervised by a juvenile probation officer.

The other alternative is commitment to the Texas Youth Commission (TYC). Commitment to TYC is usually reserved for serious offenses or for violation of an earlier probation or for youths who are frequent offenders. Commitment to TYC removes the juvenile from the jurisdiction of the court.

A youth found to have engaged in conduct indicating a need for supervision may be placed on probation but may not be committed to the TYC. If the juvenile thereafter violates the terms of probation, he may be adjudicated for delinquent conduct and (in the discretion of the court) committed to a facility of the TYC.

The Texas Youth Commission is a state juvenile corrections agency. It is responsible for the care of young people with a wide range of needs and problems who are referred to the State by the juvenile courts. In order to provide appropriate care for every juvenile committed to the agency by the courts, TYC operates an array of community and institutional programs. The object is to offer a continuous range of care governing the full spectrum of needs and supervision requirements of the youths committed to the agency's care. The TYC's range of care includes both residential and nonresidential services.

Community residential treatment is a large part of the TYC's program. Halfway houses, residential treatment centers and group homes meet the needs of many TYC wards. The Texas Youth Commission places youth in more than 74 private child care facilities in Texas, on a contractual basis with the individual facilities.

TYC also operates its own halfway houses. It has halfway houses in Austin, Corpus Christi, Dallas, El Paso, Harlingen, Houston, San Antonio, and other cities.

Sometimes the TYC places juveniles in community residential care (such as halfway houses) upon their commitment to the agency. Other juvenile offenders will have served time in one or more of the institutional programs before they are assigned to community residential care. Some offenders, of course, are never assigned to community residential treatment.

TYC operates a number of institutional programs. The oldest (and perhaps most infamous) of the facilities, the Gatesville State School, was closed in 1979, and its physical plant was transferred to the Texas Department of Corrections.

For youths who have committed frequent or serious offenses, TYC still operates training schools at Brownwood, Pyote, Crockett, Gainesville and Giddings. When possible, a juvenile is placed in one of these schools according to its proximity to his or her home. The schools provide approved academic programs, skills and job training, peer group and individual professional counseling, and student enrichment programs such as community volunteer services. The facility in Giddings has been designated for the more serious offenders.

TYC also places its wards in residential contract programs, or on home placement. These "placements" are under the supervision of a Texas Youth Commission parole officer. The parole officer works closely with the youth, his family, and the community resources available to meet the youth's needs. Parole officers can purchase services for their clients such as vocational training, psychological counseling, medical care and clothing when they are not otherwise available.

Because of the opportunity they present for psychological and medical help, halfway houses and placements are frequently used in TYC supervision of youthful drug abuse offenders.

Any youth facing return to a training school for violation of a parole condition is provided a parole revocation hearing prior to such a disposition. The youth must be represented by counsel at the hearing. If the youth can afford his own counsel, he uses the retained counsel of his choice. If the youth is indigent, then the State Bar of Texas (Center for Correctional Services) provides an attorney through appointment.

If the youth was originally placed on probation by the juvenile court, he does not come under the jurisdiction of the TYC. The youth on probation remains under the care of the juvenile court until the term of the probation is completed. The court may set the probationary term at not more than a year, subject to extensions of not more than a year each. If a youth is placed in a foster home or agency during the probation period, parents may be ordered to pay for the support of the child. The court also has the authority to prevent a person from having further contact with a juvenile if the court finds such person was a contributing cause of the youth's unlawful conduct. A recent amendment to the Family Code provides that a juvenile judge may also require compulsory counseling for the parents as well as for the child.

After the youth has been put on probation, the probation officer or other authority may request a hearing to modify the disposition of the case. Modification of disposition may, for example, consist of probation's being revoked, with commitment to the TYC. Specific probation requirements, such as the school to be attended, curfew hours, etc., may be changed according to the circumstances. Such a hearing may be requested by the juvenile himself, a legal representative of the youth, the probation officer or the court itself.

Appeals

A juvenile case may be appealed to the appropriate Texas Court of Appeals as a civil matter and from that court to the Texas Supreme Court. Any decision made at the transfer, adjudication, disposition or modification of disposition hearings may be appealed. The judge is required to instruct the attorney to advise the juvenile and the parents of the rights to appeal and have legal counsel on appeal. The appellate court may affirm, reverse or modify the decision of the juvenile court. The appellate court's decision may even include a change in the order of disposition or a modified disposition. The power to modify the juvenile court's disposition gives the appellate court authority in juvenile cases beyond that which it would normally have in ordinary civil or criminal appeals. The Family Code also provides that the juvenile court or the appellate court has the discretion to release the juvenile on personal bond when an appeal is filed.

III. MATERIAL FOR TEACHER

A. When and Where to use this Unit

1. When teaching drug abuse portions of a health or physical education class.

2. When teaching a government or social studies class unit on how laws are made or why laws are made.

3. When teaching a unit on criminal law or juvenile delinquency in a social studies or health class.

B. Behavioral/Instructional Objectives:

After completing this unit, students will be able to:

1. Describe that drug abuse is the nonmedical use of drugs for their mood-altering properties.

2. Identify state and federal laws on drug abuse as Controlled Substances Acts.

3. Know that the Controlled Substances Acts classify drugs into different "schedules" or lists, according to how dangerous the substance is.

4. Define the nonmedical possession of a controlled substance as a criminal offense.

5. State that drugs like heroin, cocaine, marihuana, amphetamines, and barbiturates are on the controlled substances lists.

6. Explain that the classification of a substance as controlled can be changed by changing the law.

7. State that youthful drug offenders between the ages of 10 and 17 are handled in special courts called juvenile courts under special juvenile procedures.

8. State that a drug offender between the ages of 15 and 17 may be "certified" for trial as an adult.

9. Explain that throughout the processing in the juvenile system there are opportunities to refer the drug offender to drug abuse treatment facilities.

10. Describe that a petition for "adjudication" is what is heard by the juvenile court, and that the juvenile must be afforded some constitutional protections at the hearing.

11. Define "adjudication" as a fact finding that the youth committed either delinquent conduct or conduct indicating a need for supervision.

12. Define "delinquent conduct" as including a violation that would be a felony or a jailable offense if committed by an adult.

13. Realize that almost all drug offenses are delinquent conduct.

14. Identify "conduct indicating a need for supervision" as conduct such as alcohol possession, driving while intoxicated, driving under the influence of drugs, inhalant abuse, and truancy.

15. Explain that juvenile probation is living within the terms of probation set by the juvenile court, and that the conditions may include curfews and treatment and counseling at a community drug abuse center.

16. Know that "adjudication" may result either in probation or commitment to the Texas Youth Commission.

17. Describe the Texas Youth Commission as the state agency charged with custody and care of youths found to have committed delinquent conduct.

18. Know that TYC commitment may mean placement in drug treatment halfway houses or confinement in a state school.

C. Suggested Films: Inhalant Abuse
Alcohol: It's Your Decision

Contact: Texas Young Lawyers Association
Law-Related Education
P.O. Box 12487
Austin, Texas 78711
Phone: (512) 475-1234

From other sources: "Epidemic" (16mm - 20 min.)

Contact: Texans' War on Drugs
7800 Shoal Creek Blvd.
Austin, Texas 78757
(512) 459-1231

OR the Drug Abuse Chairman of your local LIONS CLUB, see local telephone directory. The film is presented without charge by local Lions Club.

D. Suggested Pamphlets from TYLA/State Bar of Texas: Juveniles and the Law
Trial by Jury

E. Background Materials for Teacher: (See Section II, above)

F. General Discussion, Debate Issues:

1. Do you believe marihuana should be a controlled substance? Why or why not?

2. How would you go about having marihuana (or any other substance) taken off the schedules for the Federal Controlled Substances Act? For the Texas Controlled Substances Act?

3. Why are drug offenders under 17 years of age not prosecuted for criminal acts under the Texas Controlled Substances Act?

4. Explain the function of "halfway houses" in the treatment and rehabilitation of juvenile drug offenders.

5. Explain what is a juvenile court.

6. Compare delinquent conduct with conduct indicating a need for supervision, giving specific examples of each.

7. What constitutional protections do juveniles have in juvenile court?

8. May a juvenile ever be tried and punished as an adult for a criminal drug offense? Explain why or why not. If it is possible, then explain the conditions necessary for it to happen.

9. Explain what the Texas Youth Commission is and give examples of how it might affect the lives of youthful drug offenders.

10. If a youth is taken into custody for drug abuse, must the youth always be taken before the juvenile court? Explain your answer carefully.

G. Student Activities:

1. Make posters defining the various types of controlled substances.

2. As a class visit the juvenile probation department for your county.

3. Visit as a class a drug abuse treatment center or halfway house and interview the personnel about how drugs affect the lives of juvenile drug offenders.

4. Arrange for a local representative of the American Medical Association to present information on drug overdose.

5. Visit a local hospital that treats drug abuse patients.

6. Request a representative of the local police force to explain how juvenile drug abuse arrests are handled in your county.

7. Write the Drug Enforcement Administration for free government material on drugs of abuse. Assign different types of drugs to different groups of students for presentation of reports, exhibits, etc., to the whole class.

H. Community Resource Persons:

Judges, lawyers, juvenile probation officers, and other juvenile probation department personnel, physicians, nurses, hospital administrators, State legislators, law enforcement officers, public and private organizations and interest groups on drug abuse including:

National Institute on Drug Abuse
National Clearinghouse for Drug Abuse Information
Room 10A-56, Parklawn Building
5600 Fishers Lane
Rockville, MD 20897

National Federation of Parents for Drug Free Youth
9805 Dameron Drive
Silver Springs, MD 20902

Parent Resources and Information on Drug Education (PRIDE)
Georgia State University
Atlanta, GA 30303
(404) 658-2548

Texas Department of Community Affairs
Drug Abuse Prevention Division
Texas Clearinghouse for Drug Information
P.O. Box 13166, Capitol Station
Austin, Texas 78711

Texans' War on Drugs
7800 Shoal Creek Blvd.
Austin, Texas 78757
(512) 459-1231

I. Vocabulary:

administrative agency
administrative hearing
addiction
alcoholic beverages
abscess
amphetamines
behavior
chemical substances
criteria
cocaine
Congress
contaminants
criminal laws
derivatives
Department of Human Resources
district court
federal government
Federal Register
free will
felony

heroin
hepatitis
intoxicated
juvenile
juvenile justice system
LSD
legislature
mood-altering properties
marihuana (marijuana)
malnutrition
misdemeanor
narcotics
productivity
probation
regulations
statutes
state government
society
sterile
synthetic substances

J. Bibliography:

Dawson, Robert O. "Delinquent Children and Children In Need of Supervision," 5 Tex. Tech L. Rev. 509 (1974).

Drug Enforcement Administration, United States Department of Justice. Reprint, "Drugs of Abuse," 6 Drug Enforcement (No. 2, July 1979), pp. 1-37.

Office of Court Administration. Texas Juvenile Probation Report: Calendar Year 1979 (June 1980).

State Bar of Texas. Juveniles and the Law (Pamphlet 1979).

Texas Family Code, Title 3 (Vernon 1975 & Supp. 1983).

Topic Packet IX.

ALCOHOL ABUSE

Materials prepared by: J. Michael Bradford

NOTE: [To Visiting Speaker] Please remember to provide a copy of this entire topic packet, the Introduction section of this book, and the Handbook Of Strategies (Appendix to this book) to the teacher of the class you will be visiting. It is best, if possible, to provide these materials to the teacher in advance of your visit to the class.

At the time of your visit please deliver to the teacher a copy of the Directory of LRE Projects which appears at the back of this book.

ALCOHOL ABUSE

I. MATERIALS FOR LAWYER-SPEAKER

A. Statement of Purpose and Goals:

To increase student awareness of the dangers of alcohol abuse; to provide information about the laws regarding alcohol abuse; to encourage students to consider the various laws and dangers of alcohol abuse in making their decisions about drinking alcohol; and to encourage students to refrain from the use of alcohol and alcohol abuse.

B. Briefing Materials (see Section II, below).

C. Practical Suggestions:

(1) Read and review the Introduction to this Handbook.

(2) Read and review the section of this Handbook which appears immediately after the Introduction, and which is entitled: "Practical Suggestions for Visiting Speakers - Do's & Don'ts: Tips on How to Communicate Effectively."

(3) a. Begin the classroom presentation by brainstorming (see Appendix, Strategy #3) with students why they think the state should regulate the consumption of alcohol. Write all ideas on chalkboard.

b. Ask students to rank (see Appendix, Strategy #4) the top 5 reasons for regulating alcohol use.

c. Describe and discuss with students specific measures designed to alleviate problems identified by students.

II. BRIEFING OR BACKGROUND MATERIALS FOR VISITING SPEAKER AND FOR TEACHER

Alcohol is a drug that is socially acceptable and legal in our society. It is often promoted by advertising as glamorous and exciting. When used in moderation it is generally legal for those of proper age to buy and drink alcohol. However, it is a fact that alcohol use may be very dangerous and illegal when abused. The decision about whether or not to use alcohol is a personal one, but the abuse and illegal use of alcohol is probably the most serious drug problem in our country.

1. Who Uses Alcohol and Why?

Alcohol is widely available in our society and is accepted by many families, social groups, businesses and religious groups. In fact, it is estimated that 7 out of 10 adults drink at least occasionally and 8 out of 10 high school seniors have tried alcohol at least once.[1] Although no exact figures are available, it is believed that more than 100 million people in the United States drink alcohol to some extent.[2]

It is fair to say, therefore, that we live in a "drinking society," and each person must make an individual decision regarding alcohol use. Many people elect not to drink at all for various reasons including religious beliefs, health reasons, personal philosophy or because they have a history of alcoholism. Many people choose to drink, but do so in moderation for social reasons, personal enjoyment or relaxation. Unfortunately, there are many people who abuse alcohol and drink to excess to the point that they endanger themselves and others. They abuse alcohol for many negative reasons such as to attempt to escape from problems, to ease the pain of loneliness, to impress other people because they are insecure about themselves, or simply due to a lack of self control.

In order to make an intelligent and mature decision about the use of alcohol, it is important to understand what it is and the dangers and legal problems that may arise from its use and abuse. It is also important to understand what alcohol does to you and how to stay within your limitations.

2. Alcohol and its effects

Most people do not think of alcohol as a drug, but that is exactly what it is. Although alcohol is often referred to as a stimulant, it is actually a depressant that affects the central nervous system. It acts in much the same manner as an anesthetic to lower or depress the activity of your brain.[3]

Alcohol is not digested like food. Instead it is absorbed directly into the bloodstream and circulates to all parts of the body.[4] Upon reaching the brain, alcohol impairs muscle coordination, numbs feelings, dulls normal judgment, and makes concentration more difficult.[5] The percentage of alcohol in the blood is directly related to the amount of alcohol that circulates to the brain and the degree of impairment of judgment and physical coordination that results.

No two people react to alcohol in exactly the same way, but there are general factors that affect the concentration of alcohol in the blood. The most obvious factor is the amount of alcohol ingested, which includes both the number and strength of the drinks taken. The amount of alcohol ingested may be affected by the type of drink, but there is general misunderstanding on that subject. It is true that beer usually contains from 4% to 6% alcohol by volume, while wine contains a higher percentage of 12% to 15% by volume.[6] The various types of "distilled spirits" (whiskey, rum, vodka, etc.) usually contain from 40% to 50% alcohol by volume. However, the normal servings of beer (12 oz.), wine (3 oz.), and distilled spirits (1 oz.) contain about the same amount of alcohol (from about .40 to .48 oz. of alcohol per serving).[8] Therefore, a person who "only drinks beer" may become just as intoxicated as a person who drinks other forms of alcohol. There are certain types of mixed drinks, such as "martinis" or "manhattans," that contain higher amounts of alcohol and result in faster intoxication.[9]

In general, the higher the level of alcohol ingestion, the higher will be the level of concentration in the blood. At a certain level, "intoxication" will occur. Intoxication means that a person has received too much alcohol to perform activities that require reasonable coordination or judgment.[10] Research shows that when the blood alcohol concentration is between .0% and .04%, the majority of people do not demonstrate significant impairment of their mental and physical abilities. When the level increased to between .05% and .08% the majority of people show measurable impairment, and when the level is above .08% research shows that all people are impaired measurably.[12] Under Texas law, a person with a blood alcohol level of .10% or higher is now automatically too intoxicated to safely operate a motor vehicle in a public place or road.[13]

Although there is no magical way to prevent intoxication effects when alcohol is ingested in the body, there are ways to delay the reaction and moderate the degree of intoxication. First, drinking slowly will reduce intoxication. Since it takes about one hour for the alcohol from one drink to leave the body, a 150-lb. person could consume one drink in an hour and remain reasonably sober.[14] Three drinks in that same time period would likely result in intoxication.[15] Body weight will also affect the speed and degree of intoxication. For example, a 200-lb. man must consume twice as much alcohol as a 100-lb. man to have the same blood alcohol concentration.[16] Another factor is the amount of food in the stomach. Since alcohol is absorbed through the stomach lining directly into the bloodstream,[17] food in the stomach will slow the rate of absorption. However, if too much alcohol is ingested, intoxication will still occur.

3. Dangers of alcohol

Alcohol is a chemical compound that is toxic to humans. A sufficient amount of alcohol abuse over a period of time can result in serious physical illness and even death. Heavy drinking over a period of years causes greatly increased instances of cirrhosis of the liver and liver cancer, stomach ulcers, mouth cancer, stomach and throat cancer, pancreas disorders, heart disease and heart attacks, weakened muscles and damaged brain tissue that results in loss of memory, decreased learning ability and personality disorders.[18]

Large amounts of alcohol in a short period of time may result in special dangers. Persons who ingest alcohol to the degree that their blood alcohol level reaches .30% may suffer severe respiratory depression requiring medical attention. A person who reaches a .40% level may lapse into a coma which could result in death.[19]

There are many frightening statistics that show the greatest danger of alcohol to be drinking and driving. The number one cause of teenage deaths is alcohol-related automobile accidents.[20] In addition to the deaths, about 40,000 teenagers a year are disfigured. It is estimated that one half of all deaths caused by auto accidents, about 25,000

deaths a year, are caused by alcohol.[21] The chances of an automobile accident are 3 times greater after only one drink. A blood alcohol concentration of .10% results in a 6 times greater chance of an accident, and a .15% level makes the risk of accident 25 times greater.

One of the greatest dangers of alcohol is the possible development of the disease alcoholism. An alcoholic is a person who cannot control drinking even when it damages health, employment, mind and family.[22] There are approximately 17 million alcoholics in the United States, and studies show that $42 billion a year is spent due to alcoholic illness treatment, lost production and property damage.[23] The real danger of alcoholism is that there is no single cause, and it appears that any type or category of person could be struck after alcohol use over a period of years.[24] In fact most alcoholics are "typical" people, not "skid row" types. The real damage to such people can hardly be measured in destruction of families, loss of self respect, juvenile delinquency, crime and suicide.

4. Alcohol and the law

Although alcohol is a legal drug, there are many laws regulating its use. What follows is a very brief discussion of some selected laws that should be of special interest to students.

a. Driving while intoxicated

It is an offense against the laws of Texas for a person to drive or operate a motor vehicle in a public place while intoxicated.[25] A person is intoxicated if either of two conditions exist: 1) not having normal use of mental or physical faculties by reason of alcohol, drugs or both, or 2) having a blood alcohol concentration of .10% or more.[26]

A public place is more than just highways. It includes beaches and places to which the public has access (yards, parking lots, etc.)[27]

A person convicted of DWI is subject to serious penalties that become more severe with each conviction. The first two convictions a person receives are misdemeanors that can result in a fine, jail sentence in the county jail and suspension of driver's license for up to two years. The third conviction may be prosecuted as a felony, and it may result in a term of imprisonment in the penitentiary for up to 5 years. A more detailed analysis of the penalties for DWI is set out in Appendix I at the end of this paper.

b. Involuntary Manslaughter

It is also an offense against the laws of Texas to cause the death of someone by use of an automobile, even if by accident or mistake, if a person is intoxicated while operating the

vehicle.[28] Therefore, if a person operates an automobile while intoxicated and has an accident resulting in someone's death, that person is guilty of this offense. Involuntary manslaughter is a 3rd degree felony punishable by a fine up to $5000 and imprisonment in the penitentiary up to 10 years.[29] Even if probation is given in such cases, there is a minimum mandatory jail sentence of 120 days in the county jail. A driver's license may be suspended up to 2 years as well.

c. Public Intoxication

A person who appears in a public place under the influence of alcohol or any other substance to the degree that he endangers himself or others is guilty of public intoxication.[30] This is a Class C misdemeanor that carries a maximum punishment of $200 fine.

d. Possession of Alcohol by a Minor

A person under the age of 19 commits an offense if he or she possesses an alcoholic beverage.[31] A first offense under this section carries a maximum fine of $200, and a second offense is punishable by a maximum fine of $500. A minor may possess alcohol in the presence of an adult (19 years or older), parent, legal guardian or spouse. A minor may also possess alcohol as a part of his employment on licensed premises so long as he is not engaged in the actual sale, preparation or serving of the alcoholic beverages.[32]

e. Furnishing Alcohol to a Minor

A person commits an offense if he purchases an alcoholic beverage for, gives or makes available an alcoholic beverage to a minor.[33] Again, a minor is a person under the age of 19. A violation of this law is punishable by fine up to $500. An adult parent, legal guardian or spouse may purchase alcohol for a minor if the minor is in the adult's presence when the beverage is possessed or consumed.

f. Misrepresentation of Age

A minor commits an offense if he falsely states that he is 19 years of age or older or presents false documentation to that effect to a person engaged in selling or serving alcoholic beverages.[34] A first conviction for this offense carries a maximum fine of $200. A second conviction may result in a maximum $500 fine.

FOOTNOTES

1. "What Every Teenage Should Know About Alcohol," page 3, A Hazelton Educational Material published by the Channing L. Bete Co., Inc., South Deerfield, M.A., 1983 Edition.

2. "Don't Drink and Drive," page 1, a publication of the National Safety Council, Stock No. 329.25, 1978 Edition.

3. Id., at page 3.

4. See footnote #1, at page 6.

5. See footnote #2, at page 3.

6. "Texas Breath Alcohol Testing Program, Operator Manual," page 5-1, published by the Texas Criminal Defense Lawyers Association, 1982 Edition, (This is the breath test operator manual for the Texas Department of Public Safety).

7. Id. at page 5-3.

8. See footnote #2, at pages 7-8.

9. Id.

10. Id.

11. See footnote 6, pages 5-14.

12. Id.

13. Vernon's Annotated Code of Civil Procedure, Article 67011-a(a) (2) (B), as amended, effective January 1, 1984.

14. See footnote #1, at page 6.

15. See footnote #2, at page 8.

16. See footnote #6, at page 5-8.

17. Id. at pages 5-3 through 5-5.

18. See footnote #1, at page 7.

19. See footnote #6, at page 5-14.

20. See footnote #1, at page 10.

21. See footnote #1, at page 10, and footnote #2, at page 1.

22. "Alcoholic in the Family?" page 1, A Hazelton Educational Material published by the Channing L. Bete, Co., Inc., South Deerfield, M.A., 1983 Edition.

23. Id. at pages 1 and 2.

24. Id.

25. Vernon's Annotated Civil Statutes, Article 67011-1(b), as amended effective January 1, 1984.

26. Id. at section (a) (2) (A) & (B).

27. Id. at section (a) (4).

28. Vernon's Annotated Penal Code, Section 19.05 (a) (2), as amended, effective January 1, 1984.

29. Id. at section 19.05(c).

30. Vernon's Annotated Penal Code, Section 42.08(a).

31. Vernon's Annotated Alcoholic Beverage Code, section 106.05.

32. Id. at section 106.05(b); See also Vernon's Annotated Alcoholic Beverage Code, section 106.09.

33. Vernon's Annotated Alcoholic Beverage Code, Section 106.06.

34. Vernon's Annotated Alcoholic Beverage Code, Section 106.07.

APPENDIX I

DRIVING WHILE INTOXICATED

I. PENALTIES

A. 1st Offense: A fine ranging from $100 to $2,000; confinement in jail from 72 hours to 2 years. Probation may be granted, but defendant must undergo an alcohol or drug dependency evaluation.

License Suspension: 90 to 356 days. On unaggravated first offense defendant can take DWI educational course as a term of probation and his driver's license will not be suspended provided the course is successfully completed within 180 days from the date of probation.

B. 2nd Offense: A fine ranging from $300 to $2,000; confinement in jail from 15 days to 2 years. Mandatory 3 days minimum jail time as a condition of probation. Second DWI also to include alcohol or drug dependency treatment as a term of probation.

License Suspension: 180 days to 2 years suspension.

C. 3rd or Subsequent Offense: A fine ranging from $500 to $2,000; confinement in the county jail from 30 days to 2 years; or, confinement in the state penitentiary from 60 days to 5 years. Mandatory minimum jail time of 10 days as a condition of probation. On 3rd or subsequent DWI offenses, defendant must undergo alcohol or drug dependency treatment as a term of probation.

License Suspension: 180 to 2 years for 3rd and subsequent offenses.

D. "Aggravated DWI": This is a new concept in DWI law in Texas. Basically, this is an enhancement provision. If another person suffers serious bodily injury as a direct result of a person driving while intoxicated, then the penalty shall be enhanced as follows: Add $500 to the minimum and maximum fine; increase minimum confinement by 60 days. So, for each DWI offense in which serious bodily injury is cause, punishment will be as follows:

1st Offense Aggravated DWI: A fine ranging from $600 to $2,500; confinement in jail from 63 days to 2 years. Mandatory 30 days minimum jail time as a condition of probation.

2nd Offense Aggravated DWI: A fine ranging from $800 to $2,500; confinement in jail from 75 days to 2 years. Mandatory 30 days minimum jail time as a condition of probation.

3rd Offense Aggravated DWI: A fine ranging from $1,000 to $2,500; confinement in county fail from 90 days to 2 years; or, 120 days to 5 years in the state penitentiary. Mandatory 30-day minimum jail time as a condition of probation.

E. Involuntary Manslaughter (DWI Homicide): This offense is unchanged in penalty under the Penal Code. It is a felony of the 3rd Degree which allows for a fine not to exceed $5,000 and confinement in the penitentiary from 2 years to 10 years.

The following has been added to the penalty for DWI Involuntary Manslaughter: Mandatory minimum jail time of 120 days; license suspension from 180 days to 2 years.

II. PROBATION AND DEFERRED ADJUDICATION:

A. Deferred Adjudication: NO DEFERRED ADJUDICATION FOR DWI. This bill not only removes application of deferred adjudication from the offenses of DWI and DWI Involuntary Manslaughter, it also removes other forms of probation which allow a defendant's record to be dismissed.

B. Probation:

1. Final Conviction: Probation is always counted as a final conviction. That means that every offense is counted for enhancement purposes.

2. Mandatory Jail Time: 1st offense jail time is required unless such jail time is probated. For Aggravated DWI offenses, 2nd and subsequent offenses as well as DWI Involuntary Manslaughter, jail time is mandatory as a term and condition for receiving probation.

3. Alcohol and Drug Rehabilitation

1st Offense: DWI education program must be taken if the defendant wishes to avoid having his licenses suspended for up to one year; a post-sentence evaluation to determine whether the defendant has an alcohol or drug dependency problem.

2nd and Subsequent Offenses: Evaluation by a person qualified in recognizing alcohol and drug dependancy problem with a prescribed treatment program, if available in the county, which shall be paid for all or in part by the defendant based upon his/her ability to pay. The court has discretion to credit the cost of such rehabilitation against the fine assessed.

4. Community Service Restitution Programs: The court may require that the defendant participate in a community service program. However, this service shall not be used to dismiss the DWI charges as is done with other offenses where community service probation is offered.

III. MATERIALS FOR TEACHER

A. When and Where to Use this Unit:

1. While teaching about the American legal system in American History and Government Courses.

2. While teaching about alcohol abuse in Health, Science or Home Economics courses.

3. Suggestion: Use this as a special program during Law Week.

B. Behavioral/Instructional Objection:

After completing this unit, students should be able to:

1. Know the basic elements of alcohol related criminal offenses under Texas law, including DWI, Involuntary Manslaughter, Possession of Alcohol by a Minor and Making a False Statement to Purchase Alcohol.

2. Describe the physical effects of alcohol on the human body.

3. Understand the danger to human health caused by alcohol abuse.

4. Make an informed and intelligent decision on whether to drink alcohol.

5. Discuss the reasons that people abuse alcohol and ways to moderate the danger of its abuse.

C. Suggested Film from TYLA: Alcohol: It's Your Decision

Contact: Texas Young Lawyers Association
Law-Related Education
P.O. Box 12487
Austin, Texas 78711
Phone: (512) 475-1234

D. Suggested Pamphlets from TYLA/State Bar of Texas: None

E. Background Materials for Teacher (see Section II, above).

F. General Discussion, Debate Issues:

1. What do you believe the legal age should be for possession and consumption of alcohol? Why?

2. What punishment should be given to a person who drives while intoxicated and causes the death of an innocent person in an automobile accident? Do you believe that the maximum punishment of ten years in prison for voluntary manslaughter in such a situation is too severe? Is it not severe enough? How would you feel if the person killed was a relative or close friend?

3. What are the reasons that people become alcoholics? What are some signs or indications that a person may be an alcoholic? What kind of help is available for an alcoholic?

4. Why do people drink alcohol knowing that it may be dangerous? Why do students drink alcohol knowing it is illegal?

5. What is the meaning of "intoxication" in the Texas DWI law? What are the possible punishments for a person guilty of DWI? Are those punishments fair? Why or why not?

6. How many drinks does it take to become intoxicated on mixed drinks? How many beers does it take to make a person intoxicated? What factors would be important in affecting whether a person becomes intoxicated from drinking alcohol? Can a person tell if he or she is intoxicated?

7. What are the most serious dangers of alcohol? How dangerous is alcohol compared to other drugs? Should alcohol be illegal for all citizens to possess or consume? Why or why not?

G. Student Activities:

1. Visit an alcoholic treatment center.

2. Collect advertisements for alcoholic beverages. Discuss what image the sellers of alcohol are attempting to promote to the public. How does that compare with the reality of alcohol use?

3. Visit a courtroom and observe either an alcohol related criminal trial, guilty plea or sentencing procedure.

4. Conduct an opinion poll of other students or the community about the legal drinking age and other laws relating to alcohol use.

5. Students could interview various people in the community about how to reduce the dangers and problems of alcohol in the community. Reports of the interviews could be ma to other class members. Suggested persons to be interviewed include: judges, lawyers, policemen, doctors, religious leaders, state legislators, newspaper and television reporters, alcohol treatment program administrators, teachers and special interest group leaders (such as Mothers Against Drunk Drivers).

H. Community Resource Persons:

Judges, lawyers, law enforcement personnel, legislators, news media representatives, alcohol treatment program personnel, special interest groups and religious leaders.

I. Vocabulary - Glossary of Terms:

alcoholism
intoxication
driving while intoxicated
blood alcohol concentration
depressant
cirrhosis of the liver
involuntary manslaughter
third degree felony
public intoxication
possession of alcohol by a minor
furnishing alcohol to a minor
Alcoholics Anonymous (A.A.)
misrepresentation of age (to obtain alcohol)
public place (within DWI law)

J. Resource Groups: (to provide reading materials, films or speakers)

1. Texas Commission on Alcoholism
   Sam Houston Building
   Austin, Texas 78701
   (512) 475-2577

2. Texans' War on Drugs
   7800 Shoal Creek Blvd.
   Austin, Texas 78757
   (512) 459-1231

3. Texas Dept. of Community Affairs
   Drug Abuse Prevention Division
   P.O. Box 13166, Capitol Station
   Austin, Texas 78711

4. Local Groups:

   a. Alcoholics Anonymous

   b. Al-Anon Family Group

   c. Palmer Drug Abuse Program

   d. United Way

NATIONAL PROJECTS:

American Bar Association
Charlotte Anderson
750 North Lakeshore Drive
Chicago, Illinois 60611
312/988-5000

American Institute for Character Education
Ray S. Erlandson, Educational Consultant
P.O. Box 12617
San Antonio, Texas 78212-0617
512/734-5091

Constitutional Rights Foundation
Vivian Monroe, Executive Director
Todd Clark, Education Director
1510 Cotner Avenue
Los Angeles, California 90025
213/473-5091

Law in A Changing Society
Gay Luckie Bearden, Director
3700 Ross Avenue
Dallas, Texas 75204
214/748-2284

Law in A Free Society/Center for Civic Education
Charles Quigley, Executive Director
5115 Douglas Fir Drive
Suite 1
Calabasas, California 91302
213/340-9320

Institute for Political and Legal Education
Katherine Wallin, Program Coordinator
207 Delsea Drive, Route 47
RD No. 4, Box 209
Sewell, New Jersey 08080
609/228-6000

Law in Action
Trudy Faust, Coordinator
Room 211
393 North Euclid Avenue
St. Louis, Missouri 63108
314/361-8626

National Institute for Citizen Education in the Law
Lee Arbetman, Deputy Director
605 G Street, N.W.
Washington, D.C. 20001
202/624-8217

Phi Alpha Delta Law Fraternity International
Robert E. Redding, Director
Juvenile Justice and Delinquency Prevention Program
Suite 926
425 Thirteenth Street, N.W.
Washington, D.C. 20004
202/737-5151

STATE PROGRAMS:

Austin American-Statesman
Educational Services Director
Joan Filvaroff
P.O. Box 670
Austin, Texas 78767
512/445-3500

Citizen Me
Caroline Penn, Coordinator
Harris County Department of Education
6208 Irvington Boulevard
Houston, Texas 77022
713/696-8150

Constructive Living Skills
Molly McAlpin, Coordinator
Nelda Barnes, Secondary Supervisor
Texarkana ISD
4241 Summer Hill Road
Texarkana, Texas 75503
214/794-3891 or 794-3651

STATE PROGRAMS: (Continued)

Dallas Morning News
Judith Garrett
Educational Services
Communications Building
Dallas, Texas 75265
214/745-8351

Governor's Juvenile Justice Education in Public Schools Project
Rob Wiley, Program Director
Sam Houston Bldg., #118
P.O. Box 12428
Austin, Texas 78711
512/475-1061

Office of Law-Related Education
Hope Lochridge, Coordinator
State Bar of Texas
P.O. Box 12487, Capitol Station
Austin, Texas 78711
512/475-1033

Texas High School Mock Trial Competition
Judy Yarbro
Dallas Legal Education Center
2101 Ross Avenue
Dallas, Texas 75201
214/742-4675

Texas Young Lawyers Association
P.O. Box 12487, Capitol Station
Austin, Texas 78711
512/475-3715

Developing Citizenship Education for Troubled Youth and Others
Barbara Berkeley
Lincoln Instructional Center
5000 South Oakland
Dallas, Texas 75215
214/426-3234

Lubbock ISD Law Focused Education
Carolyn Goebel
1628 Nineteenth Street
Lubbock, Texas 79401
806/747-2641

Criminal Justice Center
Lyndol Wilkinson, Coordinator
Law Focused Education
Sam Houston State University
Huntsville, Texas 77341
409/294-1692

Texas Lawyers Auxiliary
c/o State Bar of Texas
Office of Law-Related Education
P.O. Box 12487, Capitol Station
Austin, Texas 78711
512/475-1033

HANDBOOK OF STRATEGIES

TABLE OF CONTENTS

1. The Continuum 1
2. Role Playing 1
3. Brainstorming 2
4. Ranking 2
5. Listing and Coding 2
6. Interrupted Film 3
7. Open Interviewing 3
8. Establishing Priorities 3
9. Range of Positions 4
10. Choosing and Acting 4
11. Unfinished Story Alternatives 4
12. Predicting Consequences 4
13. Cartoons 5
14. Collage 5
15. Simulation 5
16. The Sociodrama 6
17. The Inner-Outer Circle 6
18. Open-ended Statements 7
19. The Case Method Approach 7
20. The Mock Trial 8
21. Dialogue Debate 14
22. Structured Discussion 14
23. Quick Survey 15
24. Field Trip 15
25. Resource Speaker 15
26. Music, Poetry and the Law 16
27. Learning Stations 16

Reprinted with permission from Law in A Changing Society, Dallas, Texas

For further information, contact:

Gay Bearden, Project Director
Law in A Changing Society
912 South Ervay
Dallas, Texas 75201
(214) 748-2284

Hope Lochridge, Coordinator
Office of Law-Related Education
State Bar of Texas
P.O. Box 12487, Capitol Station
Austin, Texas
(512) 475-1033

HANDBOOK OF STRATEGIES

The purpose of this section is to provide the teacher with a reference to strategies that can be used to stimulate discussion and involvement on the part of students. Though the activities will be suggested at specific points in the teacher's manual, the individual teacher may use the strategy at any point which is appropriate.

The teacher's use of questions plays a vital part in the use of these strategies. After setting the stage for the activity, the teacher should then ask probing questions to help the students determine the facts, identify important issues, explore alternatives, and make judgments based upon prior investigation.

The kinds of questions that may be used include the following:

TYPES	EXAMPLES
Questions of fact	What happened? What did you see? What did you hear?
Questions of explanation	What do you mean by . . .? Can you say that in your own words?
Questions exploring cause and effect	Why did that happen? What will result?
Questions exploring alternatives	Can you suggest another solution? Is there anything else that can be done?
Questions challenging a position	Why do you believe . . . ? What are some advantages/disadvantages of your position?

Last, and perhaps most important, is the classroom atmosphere. Both students and teachers must feel free to express themselves if a productive exchange of ideas is to occur. If students are not accustomed to an open classroom atmosphere and to being active participants in the learning process, it may take a few experiences for them to become comfortable with this type of activity. If at first it doesn't work — don't give up, try again!

Strategy No. 1 — The Continuum

Why?

The continuum opens up a range of responses on a given issue. It allows all students to express an opinion and publicly defend that position.

How?

An issue is defined by the teacher or students. The issue may be prepared ahead of time by the teacher or it may be an outgrowth of class discussion. The teacher draws a long line on the blackboard. At either end of the line create complete extremes of the issue. Be sure the views represent polar positions. Have the students place their initials on the line to represent their stand. Do not allow anyone to take a middle position. After placing their initials on the line, ask students to give their reasons for holding that position. After the discussion, provide an opportunity for students to change their position as a result of new information.

The activity can be varied by using masking tape to make a line on the floor. Students can actually stand on the line at the position they choose. They should then discuss their reasons for selecting that position with students standing near them. Next allow each student or a representative of each basic position to justify the stand. Again students should be permitted to change their positions as a result of the discussion.

Each student can make an individual continuum by taking a sheet of paper, drawing a line on the paper, and placing an X at the appropriate point. Next ask the students to circulate and discuss their position with students whose positions are similar and different from their own.

Another variation would be to use the corners of the room to represent four specific positions on an issue. Provide the opportunities for discussion and changing positions.

Strategy No. 2 — Role Playing

Why?

Role play offers students an opportunity to engage in play-acting. Most students find great pleasure in assuming a role and teachers find it a way to stimulate students and to vary classroom activities.

How?

Role play is a useful classroom tool and will be most successful when a sequence of steps is followed.

1. Selection of the role play situation should be consistent with the teaching goals and the needs and limitations of the students.
2. A preliminary activity where students engage in simple and familiar role playing can help to relax all students and give them practice and confidence in public performance and expression.
3. The teacher should next explain the general situation to the group and explain the purposes of the drama.
4. The teacher should then explain the specific roles to be played by students and the role requirements for the audience.
5. The dramatic action should follow with the teacher intervening when necessary with questions designed to keep the action moving and the players in character.
6. After the dramatic action the teacher should lead a debriefing session to help the class review the action, analyze causal relationships and speculate on alternative behavior and consequences.

Strategy No. 3 — Brainstorming

Why?

Brainstorming is a problem-solving tool. It encourages imagination and creativity and helps elicit a number of ideas on a subject. It can be used by itself or in conjunction with one of the other suggested activities.

How?

The teacher or a student states a problem which needs a solution. The class suggests as many alternative solutions as possible using the following rules:

1. No evaluation or discussion of ideas is allowed in the brainstorming session. Judging and evaluating ideas tends to limit contributions.
2. Encourage any idea no matter how wild it may seem. It is easier to tame down a wild idea than to pep up a bland one.
3. Encourage participants to think up as many ideas as possible. When ideas are coming fast, people tend to give their imaginations a wide range and good ideas result.
4. Encourage participants to build and modify contributions of others. Often combining or modifying leads to superior solutions.

Strategy No. 4 — Ranking

Why?

Ranking gives students practice in choosing among possible alternatives and in openly supporting and defending or explaining their choices. It stimulates more critical consideration of an issue that might otherwise occur.

How?

After the class has participated in an activity where several ideas have emerged, the teacher asks the students to rank these choices according to their own preferences. The ranking can be conducted in a large group by calling on different class members or it may be done in smaller groups. After the ranking a class discussion may follow with students stating the reasons for their choices.

Strategy No. 5 — Listing and Coding

Why?

This activity encourages students to look at a topic from different viewpoints. The students may do the listing and coding assuming a role or as themselves. As they go through the activity they will be forced to look at a question from all sides; consequently, real insight should develop.

How?

The teacher asks the students to take a piece of paper and list 10 to 20 things in response to a question. (i.e. List 10 to 20 responsibilities of citizenship in the American democracy.) After the listing is completed, the students are instructed to draw lines making columns out to the side of the list. In the columns, the students code their lists according to the instructions of the teacher. (i.e. Put a check by the responsibilities which you have assumed in the last year. Put a check if you willingly accept the responsibility, etc.)

Strategy No. 6 — Interrupted Film

Why?

This activity allows the teacher to focus the student's attention on specific points in a film or filmstrip so that they gain the understandings and insights desired. Audio-visual materials are one of the most valuable tools in teaching. By engaging the eye and ear, more impact is usually made. However, there is often so much to see in a film or filmstrip that the students may miss the purpose the teacher had in using the material entirely.

How?

If at all possible, preview the film to determine where you will stop the film and what questions you will ask to get students to focus on the specific theme. Be sure all questions relate to the purpose in selecting the film or filmstrip. Cassettes or records can be used the same way. If time does not permit previewing, stop the film or other material whenever an important idea emerges.

Strategy No. 7 — Open Interviewing

Why?

This activity gives the student center stage in the classroom and a chance to explain his position or feelings on an issue. He may be interviewed as himself or in an assumed role.

How?

This activity is suggested for use in two ways. When a discussion or situation arises which the teacher or students wish to examine more closely, the teacher asks for volunteers who would like to be interviewed about the topic. The teacher asks the student questions about his beliefs and feelings. If the student answers, he must answer honestly but he may decline to answer. The teacher may be interviewed, too.

Another way to use the public interview is to set up a role-play situation. Following the role-play, interview the participants, having them relate their reactions as to what happened.

Strategy No. 8 — Establishing Priorities

Why?

This strategy helps students identify priorities within their own value systems.

How?

Teacher gives the students dittoed sheets with the following instructions:

> Below is a list of items arranged in alphabetical order. Your task is to arrange them in order of their importance to you.
>
> Study the list carefully. Then place a 1 next to the item which is most important for you; place a 2 next to the one second most important to you, and so on. If you change your mind, feel free to change your answers.
>
> Follow with a class discussion allowing students to give the reasons for their choices. Strategies 10 and 12 may also be used as a follow-up.

Strategy No. 9 — Range of Positions

Why?

This activity, along with the Continuum, helps students to see the wide range of possible positions on any given issue.

How?

The teacher breaks the group into small groups of five or six and gives them an issue which has four to six possible positions. The teacher may wish to identify the positions ahead of time or let the students identify them. Each student takes one of the positions, not necessarily his own, and writes a paragraph defending it. After the paragraphs have been shared, each group member reveals his own position and discusses the issue. If all groups were working on the same issue, each group's continuum is displayed for all to see and a class discussion follows.

Another variation is to have the ranges of position posted around the room on the walls. The class members can walk around and select the position that comes closest to their own. They may then state aloud to the whole class or to others in their group their reasoning on the issue.

Strategy No. 10 — Choosing and Acting

Why?

This activity is designed to provide students with practice in searching for alternatives when considering a solution to a problem.

How?

The teacher begins by discussing the reasons for choices which we make. Often we act out of habit rather than considering alternative ways of acting. The teacher then suggests a problem. It may be an outgrowth of a previous study or discussion or it may be suggested by the teacher to introduce a new topic of study.

Next, ask the class to brainstorm (Strategy No. 3) as many alternatives to the problem as they can think of in the time allotted — generally from three to five minutes — depending on how long it takes to exhaust suggestions.

The students are then formed into groups of three to four. They are to develop, as a team, a list of alternative solutions by combining their individual lists and by adding solutions suggested in this group setting. When the group has exhausted all of the alternatives they can think of in the time allotted — usually about 10 minutes — they are to choose the three alternatives they like best and rank these (Strategy No. 4).

The groups then report their results to the class as a whole. Discussion may follow. If you wish to encourage action on the part of students, you may ask if they would consider using any of the alternatives suggested. They may even write self contracts to implement the suggestion.

Strategy No. 11 — Unfinished Story Alternatives

Why?

This strategy enables students to consider alternatives for action in various specific situations.

How?

The teacher presents a specific situation which calls for some proposed action. Or the students may recall some situation where they were faced with a choice of actions. The situation may be related by the teacher or role played by the class, omitting the chosen course of action. The students are then asked, "What would you do?" Each student individually is to write out briefly what he would do in the given situation. Then the students break up into groups of three or four to discuss their proposals and try to decide which of their solutions would be the most desirable. They should select one and role-play it for the rest of the class. They may also relate it to the class if the teacher wishes. Following the role-play, the whole class should discuss each possible solution. Strategy No. 12 may be used in conjunction with this strategy.

Strategy No. 12 — Predicting Consequences

Why?

This strategy gives students practice in considering the consequences of a chosen alternative.

How?

This activity should be used when students have had an opportunity to select a variety of possible solutions or courses of action. (The alternatives could be generated by Brainstorming, Strategy No. 3, or the activity could be used in conjunction with Strategy No. 10 or Strategy No. 11.) Either individually or in groups, ask the students to select the three most appropriate alternatives. List each alternative and under it list as many consequences as the students can suggest. Students should realize that there is always an alternative to any given course of action. If the students suggest only one alternative, then have them consider the consequences of following or *not* following that course of action.

Strategy No. 13 — Cartoons

Why?

Cartoons are a useful tool for stimulating thinking or for allowing students to translate concepts and knowledge using a creative and entertaining media. The teacher may wish to use this activity as an evaluation instrument. It enables her to see if the desired learning has taken place but does not pose the threat of the standard pencil and paper test.

How?

Following a study of a topic which has several inherent issues, the teacher suggests that each student select one of the issues and illustrate it in cartoon form. It may be necessary to study political cartoons from the newspaper or other sources if the students are not familiar with this form of expression. The cartoons can be placed on the bulletin board for the class to examine or the teacher may select some or all and have the students respond to the cartoon by telling what it means and how it depicts one of the issues in the completed study.

The teacher may also wish to select a cartoon that is relevant to an issue which has been the topic of a classroom study. The students may then discuss the artist's viewpoint and respond to it.

Strategy No. 14 — Collage

Why?

The collage is a visual representation of an idea. It allows students to use their imagination as they select visual symbols which depict events, feelings, and attitudes on a given subject.

How?

Divide the class up into small groups and give them a topic. They will need to discuss the topic and decide on symbols which might be used to represent the idea. Provide pictures, words, and letters, either available in magazines, newspapers, etc., or already cut out, poster board, paste, scissors. Watch the progress of the project but do not give suggestions. Make them come up with their own ideas. After the collages are completed, let each group show its work. Do not let the group showing the collage talk about its work, but ask for responses from the rest of the group. "What feelings does the collage give you?" Wirte the responses or summaries of the responses on the blackboard. Ask the students who made the collage if these comments agree with what they intended and if they wish to make additional responses or comments. Continue until all groups have shown their work and a full discussion has transpired.

Strategy No. 15 — Simulation

Why?

Simulation involves students in real situations through a symbolic model of an actual or hypothetical process. It allows the participants to learn and practice new behavior, and to analyze problems and make decisions through the use of role-play.

How?

The teacher may select simulations which are already prepared, either commercially or by someone else. In this case he will need to follow the directions and play the game accordingly. In other cases, he may wish to alter the game to achieve additional or other purposes.

After participating in simulations, the teacher and students may wish to construct models on their own. Select a situation and use only those elements of reality relevant to the purpose of desired outcomes. You will need to define boundaries, set up rules, and place restrictions on those who participate. The most important part of a simulation activity is the debriefing session where the students ask about the model and about the real world analogues to events and factors in the simulation. Gear your questions to focus on the ways the simulation experiences reflect the kind of experiences people have in the real world situation you portrayed.

In using the technique of simulation, the leader should always keep in mind that the focus is the relationship between the simulated model and the real thing.

Strategy No. 16 — The Sociodrama

Why?

The sociodrama is a form of role-play or dramatic improvisation. The activity places students in a new identity in a temporary and protected situation, thus allowing real feelings and thinking to emerge. It provides an opportunity to present both sides of an issue and requires participants and observers to consider alternative views.

How?

Any kind of potential or real conflict situation is useful for this type of role-play. Begin with carefully structured activities and clearly defined roles that each participant is to play. Begin with the most secure students as actors. Stop the role play when it is apparent that the fruitful outcomes are exhausted. One way to liven things up is to add characters while the play is in progress, permit actors to add characters as they see the need for it, or change roles in the middle of the play.

Following a role playing situation, a discussion in large, or small groups is valuable. These questions are suggested:

1. How did you as actors feel?
2. How would observers have done things differently?
3. Would things work out that way in real life?
4. What might we learn from this incident or situation?

Strategy No. 17 — The Inner-Outer Circle

Why?

To teach facility at group discussion by focusing on process as well as content.

How?

Begin by asking the group what makes a good discussion. The following points should be brought out, but use the material provided by the group to establish "rules." If they do not cover all these points it may be worthwhile to proceed with the technique and see if new rules are added.

1. listen to each other
2. participate
3. don't interrupt
4. build on what other people say
5. be relevant — stick to the point

Divide the group in half (arbitrarily). Form two circles; the outer circle focuses on process, the inner circle on content. Discussion begins with a question. It may be posed by the group or instructor. Either way it should be one over which there is some disagreement.

Phase I	Inner circle discusses Outer circle observes process	5-7 minutes

Phase II	Outer circle gives feedback on process only Did the group adhere to "what makes a good discussion?"	3 minutes
Phase III	Switch circles — new inner circle discusses content	5-7 minutes
Phase IV	Outer circle gives feedback on process	3 minutes
Phase V	Evaluation — Anyone may comment on any aspect at this time	3 minutes

The technique has been most successful when the instructor does not interfere except as a timekeeper. It should be used on a regular basis if the group is to learn from it. For younger students, twenty or thirty minute periods twice a week are more valuable than extended periods once a week.

Strategy No. 18 — Open-ended Statements

Why?

This strategy may be useful as an introductory activity or as an evaluation tool.

How?

The teacher provides a stem phrase and asks students to complete it with any and all endings which come to mind. As an introductory activity this strategy focuses on the topic to be studied and provides an assessment of students' knowledge and attitudes on a given subject. The same stems can be used at the conclusion of the study to measure gains in knowledge and change in attitude.

Strategy No. 19 — The Case Method Approach

Why?

The case study allows students to grapple with real issues, to reach and support a decision, and to weigh the consequences of that decision. In approaching a problem through a case study, the student will gain practice in all levels of thinking from simple recall to evaluation.

How?

Provide students with the facts, only, of the case. Use questions and role playing, (Strategy No. 2) to identify the issue(s), develop arguments, and reach a decision. Next, provide students with the court decision. Use questions and discussion to compare and contrast their decision with that of the court and to consider the implications of the court's decision.

SAMPLE CASE STUDY — GIDEON V. WAINWRIGHT

Facts

Who was Gideon?
What crime was he accused of committing?
Why did Gideon not have a lawyer? Why did Gideon want a lawyer?

Issues

Why did Gideon think that he had a right to a lawyer?
Do you think the 6th Amendment means that a State must pay for a lawyer for a poor defendant?
State the Constitutional question that the Supreme Court must answer.

Arguments

What are the arguments favoring Gideon's position?
What are the arguments favoring the State of Florida's position?

Decision

Should the Supreme Court review the case? Why?
How would you decide Gideon's case?

Evaluation

What was the Court's decision?
What reasons did the Court give for its decision?
Do you agree with the Court?
What effect do you think the decision will have upon the rights of individuals? on the efficiency of the courts? on the powers of the States?
Should States be required to provide free legal counsel for indigents accused of minor crimes? traffic violations? Should the State be required to provide poor people with money to pay private investigators, expert witnesses, etc.?

Since the case study is the heart of a law studies program, variations on this strategy should be used to insure its continued effectiveness. Some suggested variations are:

ROLE PLAY CASE STUDY: The fact situations in many cases can easily be role played following the procedure outlined in Strategy No. 2. This variation is effective when several similar cases are to be studied and time is short. Follow the role play with a discussion comparing the fact situations, the issues, possible arguments, and decisions involved in each case.

COLLAGE CASE STUDY: Use Strategy No. 14 with the following alteration. Divide the class into three groups, one for facts, one for issues, one for the decision. Provide each group with the necessary collage materials and a summary of the case, excluding the decision. Give each group a copy of the instructions below. After the whole class has had time to respond and react to the collages, pass out copies of the Supreme Court's decision and evaluate the Court's reasoning and its implications. Compare the Court's decision to the one reached by the decision group.

Instructions for the Fact Group:

1. Read the facts about a real court case.
2. Make a collage that will depict the *facts* of this case so that anyone seeing the collage will know what this case is about.
3. Caution: Be sure the collage tells only the facts and not your feelings about the facts.

Instructions for the Issue Group:

1. Read the information about a real court case.
2. If applicable, read the Amendments to the Constitution and decide which Amendment(s) and which right(s) are involved in this case.
3. Make a collage that will depict the *issue* of this case so that anyone seeing the collage will know what the Constitutional question is.
4. Caution: Do not let the collage give away your own feelings about how the case should be decided.

Instructions for the Decision Group:

1. Read the information about a real court case.
2. If applicable, read the Amendments to the Constitution and decide which Amendment(s) and which right(s) are involved in this case.
3. Make a collage that shows how you would decide the case so that anyone seeing the collage will understand two things: (1) what your decision is and (2) why you decided the way you did.
4. If your decision is not unanimous, reserve a section of your collage for dissenting opinions.

GROUP DISCUSSION CASE STUDY:

1. Break the class into small discussion groups with five or six students in each group.
2. Have each group select a judge and a secretary.
3. The judges form a group at the front of the room.
4. Present the facts of the case to the class and as a whole.
5. Allow ten minutes for the group to arrive at a decision which will be written down by the secretary — giving the rationale.
6. Each group states its decision and rationale as the others listen.
7. The judges then decide which solution they like best and give reasons for their preference.

8. The decision of the majority of the judges would decide the case.
9. If the case was a real case, compare the decision of the judges with the historical decision.

LEARNING STATIONS CASE STUDY: See Strategy No. 27.

CONTEMPORARY CASES: Newspapers and magazines are a rich source of additional material appropriate for the case study method. Periodicals can be used to illustrate and update legal concepts. The discussion of a contemporary issue often requires the most critical thinking since the topic is timely and truly open ended. The same general questioning pattern may be used.

Strategy No. 20 — The Mock Trial

Why?

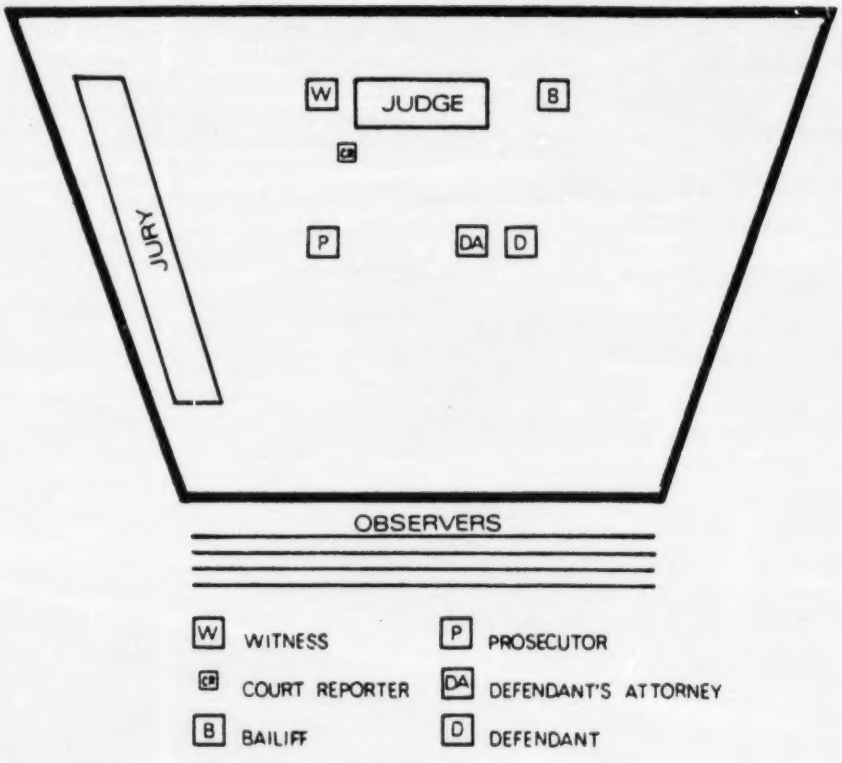
A mock trial allows students to gain first-hand experience in trial procedure. Students assume roles, apply information already learned, and solve problems in the court setting. It also may serve as an evaluation tool.

How?

The information below outlines the procedure for conducting a mock trial for either a civil or criminal case. Mock trials are most successful if introduced after students have gained some understanding of legal procedure. The time needed for a mock trial will vary according to the teacher's purposes. Adequate time must always be reserved for preparation and debriefing, if maximum results are to be obtained.

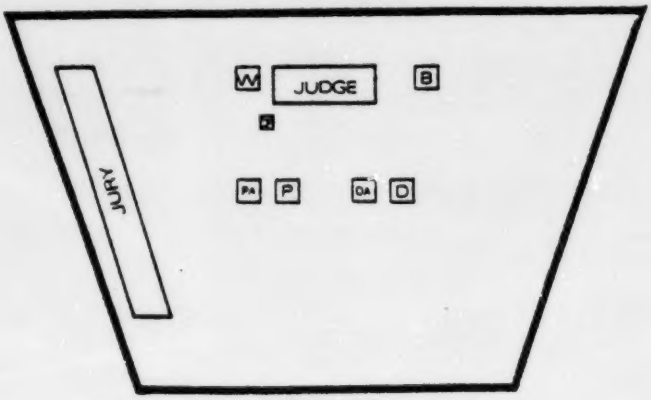
Diagrams of a civil courtroom, a criminal courtroom, and a juvenile courtroom are included. These may be useful in setting up a classroom courtroom and in discussing and comparing the participants and procedures in each type of trial.

CRIMINAL COURTROOM



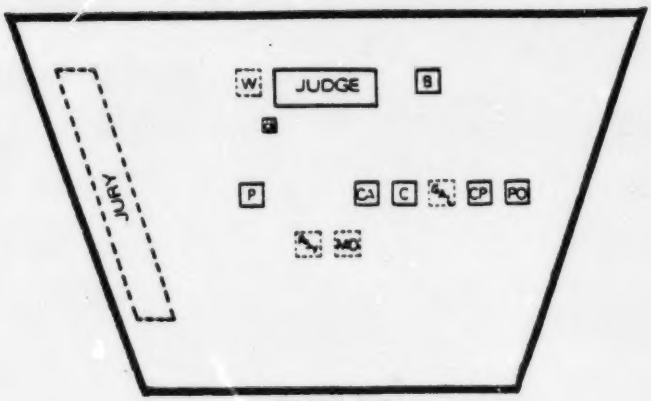
BEST COPY AVAILABLE

CIVIL COURTROOM



W WITNESS
P PLAINTIFF
COURT REPORTER
DA DEFENDANT'S ATTORNEY
B BAILIFF
D DEFENDANT
PA PLAINTIFF'S ATTORNEY

JUVENILE COURTROOM



NOT ALWAYS PRESENT
C CHILD
W WITNESS
GUARDIAN AD LITEM
B BAILIFF
GP CHILD'S PARENT(S)
COURT REPORTER
PO PROBATION OFFICER
P PROSECUTOR
PSYCHOLOGIST
CA CHILD'S ATTORNEY
MD MEDICAL DOCTOR

PROCEDURES FOR CONDUCTING A MOCK TRIAL

Mock Trial Participants

1. The Judge, to be elected by the class. This position is the most difficult and bears the most responsibility of any in the class. The Judge must be able to evaluate both sides in a debate over procedures or points in testimony and be able to decide quickly and firmly on points of conflict. He must be respected, in order to keep the court in its proper decorum, and he must be able to keep out of the ensuing court battle except in cases in which he is called upon to decide. Finally, after the attorneys make their closing arguments, he must be able to instruct the jury on principles of laws and their application to the facts which they have to decide. If the class decides to publish a class newspaper, the judge must also be familiar with the laws involving press coverage.
2. Prosecuting attorney, to be elected by the class. The Prosecuting attorney must build a case which shows the defendant is "guilty beyond a reasonable doubt" in a criminal case; or, in a civil case, he must prove the case by a "preponderance of the evidence." This means the greater weight of the evidence.
3. Defendant's attorney, to be elected by the class. The defendant's attorney must "shoot holes" in the prosecuting attorney's witnesses by showing them to be unreliable, illogical, or contradictory to other witnesses' testimonies. If he can create reasonable doubt in a criminal case in the minds of the jurors, his client will not be found guilty. In a civil case, he must show the plaintiff does not have the greater weight of the evidence supporting him. His case, also, must be built around the questioning of witnesses (direct and cross examination). He may not assert or accept opinion except in his closing argument.
4. Attorneys' assistants, chosen by each attorney. The assistants confer with their attorneys, their witnesses, and provide legal aid (and moral support) during the trial. They may not discuss the case with anyone other than their attorney. The number of assistants depends upon the size of the class.
5. The Recorder and the Clerk (the same person), elected by the class. As Clerk, he opens court and swears in witnesses. As Recorder, he operates the tape recorder and keeps a record of the numbers of the tape when each witness begins and ends testimony. The job is important because attorneys and Judge may request testimony previously given in a disagreement over conflicting statements.
6. The jurors, selected by the attorneys from the rest of the students. Those not chosen may be used as witnesses. If fourteen are questioned, each attorney has four peremptory challenges (for six-person jury). The jurors *cannot* take notes, ask questions, react excessively, or discuss the trial with anyone for the duration of the trial. It is most important that the last requirement be followed. Also, the jurors must follow the Judge's instructions (charge) at the conclusion of the presentation of the cases. During the deliberation session, the jurors are not to relate personal experiences or personal knowledge to the case. They are not supposed to think in terms of the product of their decision (the penalties involved); instead, the jurors are to evaluate the facts placed before them by the attorneys and decide based on those facts. At the beginning of the deliberation, the jurors are to elect a foreman who will conduct the voting of the jurors, and report the verdict to the Judge.
7. The defendent, the victim-complainant (if the case calls for one), and other witnesses to be decided after the facts of the case are decided. The defendant and the victim-complainant function as witnesses; all witnesses must adhere to the facts of the case. They cannot contradict the facts.

Optional Participants – Classroom Newspaper Coverage of Trial

1. Students who wish to publish a newspaper should be selected prior to the trial so they may study the legal issues and be familiar with the problems in covering a trial.
2. The newspaper editors should meet with the judge and lawyers to explain the type of coverage they are planning and to hear the limitations the judge may place on the press.
3. Reporters should interview the lawyers, police, etc. prior to the trial and write stories.
4. A paper may be published (mimeograph or any form) for each day the trial is in session.
5. Use imagination. Reporters may write other stories related to classroom procedures or make up stories comparable to those found in a daily paper. Make sure, however, that fact is distinguishable from fiction.

Ground Rules

1. Each witness must be sworn in before taking the stand.
2. Questions for examination of witnesses must be carefully planned.

3. Grounds for objections are:

   a) Witness is incompetent
   b) Question is irrelevant
   c) Attorney is badgering the witness
   d) Attorney is leading the witness

   Judge must rule on the objection by sustaining it or denying it.
4. The cross-examination: the attorney tries to discredit the witness' testimony, but questions *must be* confined to the testimony introduced by the preceding attorney. The cross-examiner may "lead" a hostile witness, if he knows the witness is hostile (Judge must decide).
5. After the attorneys make the statement, "Your Honor, I rest my case," they may not call other witnesses. In civil case, plaintiff closes, defendant closes.
6. Time demands that redirect and recross be limited to one time only.
7. ATTORNEYS MAY NOT SPEAK DIRECTLY TO ONE ANOTHER DURING THE TRIAL (such as arguing).
8. All remarks must be addressed to "Your Honor." If a disagreement arises, the Judge should ask the attorneys to "approach the bench." After hearing the objections of each attorney, the Judge makes a decision which Must Be Accepted By The Attorneys Without Further Comment.
9. Each attorney will inform the other attorney of the witnesses that he intends to call.
10. All testimony must be in accord with "the facts" set up for the Mock Trial. However, use your imagination. Additional testimony may be introduced as long as it does not contradict "the facts."
11. The Defense Attorney may not put a witness on the stand whose testimony directly contradicts that which has already been given under "Oath."
12. The Prosecution must skillfully weave a web of circumstantial evidence. He may not put a witness on the stand to say: "I saw him kill (or whatever) the victim."
13. Because of time limitation, presentation of each side's case should be limited to a day and a half (1½ class periods).

Procedures (check with county)

1. After a classroom unit on the judicial system, invite a speaker or lecture on the specifics of conducting a trial, such as choosing a jury, peremptory challenges, how to get an exhibit introduced into evidence, what the basis for objection can be, the admissibility of lie detector, psychological tests, etc.
2. The class votes on two attorneys, a judge, and a recorder-clerk. The attorneys choose their assistants who will help them build their cases, prepare witnesses, etc.
3. A committee of volunteers meets to draw up the facts of the case which will be tried.
4. The instructor meets with the judge, attorneys, and their assistants. The case is read (changes agreed on by both attorneys may be made). It is decided which attorney will be the Prosecutor and which will be the Defense and procedures will be discussed.
5. One day is devoted to choosing a jury. Each student who is not already involved is questioned as a prospective juror. Those not chosen may be used as witnesses. Each attorney has some (4 in the case of 14 possible jurors) peremptory challenges.

   FORMAT: The _____ District Court of the State of _____ is now in session. The Honorable Judge _____ presiding. Will everyone please rise.

   Judge enters, taps gavel, and says, "Be seated." Judge explains to the prospective jurors that they may or may not be selected in the case. Also, he makes a brief statement of the facts involved, so the prospective jurors are acquainted with the case in order that they may intelligently answer questions put to them by the attorneys. The Judge instructs the Clerk to call the first prospective juror. Each prospective juror (and witnesses later in the case) is administered the Oath by the Clerk:

   Raise your right hand (left hand is placed on the "book"). Do you swear that that the testimony you are about to give is the truth, the whole truth, and nothing but the truth? (Answer: I do). Be seated please.

   Prospective juror is questioned first by the Prosecuting Attorney and then by the Defense Attorney.

Sample questions:
State your name, age, and occupation.
Are you acquainted with the defendant or his attorney?
Do you know the facts related to this case?
Have you formed an opinion in this case?

Either attorney may challenge a prospective juror for cause, such as:

Your Honor, I challenge this juror because he is clearly prejudiced against the defendant.

Some jurors (number to be decided before voir dire) may be excused on the basis of peremptory challenges (no reason given by attorney).

6. After the jury of (6) (12) persons is chosen the trial begins. In a criminal trial, the judge calls for the reading of the indictment by the prosecuting attorney before asking for the opening statement.

Indictment (Criminal)

In the name and by authority of the State of_____, the Grand Jurors, duly selected, organized, sworn and impaneled as such for the County of _____, State of_____, in the _____ (year) term, of the district court of said county, upon their oaths present in and to said court that on or about the _____ day of _____, AD 19____, in the county and state aforesaid, and anterior to the presentment of this indictment, one _____ did then and there voluntarily and with malice aforethought _____ against the peace and dignity of the State.

signed: _____
Name of Foreman of Grand Jury

There is no indictment in a civil case. The trial begins with the opening statement by the plaintiff's attorney.

7. Opening statements, which are confined to the facts the attorney intends to elicit in obtaining evidence, are made by each attorney to the jury. Prosecutor is first.
8. After the opening statements:

Judge: Is the Plaintiff's Attorney (in civil case) or Prosecuting Attorney (state in criminal case) ready?
Attorney: I am, Your Honor.
Judge: Is the Defense Attorney ready?
Attorney: I am, Your Honor.
Judge: Will the Prosecuting (Plaintiff's) Attorney call his first witness?

Each witness is sworn in before taking the stand.

9. Examination of witnesses by Plaintiff's (civil) or State's (criminal) attorney must be carefully planned (each question). The witnesses must testify to matters of fact, those things which they actually saw, heard, touched, or smelled. He cannot give opinion or relate hearsay, which is what a third party has told him about the parties in the action. The attorney cannot ask leading questions of his own witness. Authorities who are especially qualified to state opinion may do so.
10. Cross-examination of witnesses by Defendant's lawyer must try to discredit the witness' testimony introduced by the preceding attorney. The cross-examining attorney may ask leading questions for the purpose of obtaining information the witness might have otherwise tried to ignore. Also, the attorney may try to bring out prejudice, bias, or contradiction in the testimony by the witness. Plaintiff's (State's) attorney may object on the basis that questions do not deal with facts touched upon in direct examination as well as previously mentioned basis of objection.
11. Redirect (only one allowed because of time): covers new matters brought out by the cross-examination and tries to rehabilitate the validity of the witness' testimony.
12. Re-Cross (only one allowed because of time) attempts to clarify or reiterate essential points of testimony if necessary.
13. After all witnesses for the Prosecution (Plaintiff) are called, the Prosecution says, "Your Honor, I rest my case."
14. Defense calls his first witness. After the same procedure which is stated above is followed with the defense witnesses, Defense rests.

15. Each attorney presents his summation speech to the jury (Defense first, Prosecutor or Plaintiff's attorney last).
16. Judge gives Charge to the jury. The charge states the issues in the case, tells the jury what it must decide as to the issues. Also, the Judge explains what the jury is to do when they leave to decide. They must first elect a foreman and then reach a decision based upon the judgment of each individual juror.
17. Jury retires to deliberate. While Jury is reaching a verdict, class members could write an evaluation. Jury returns a verdict in written form to the Judge, who reads the verdict.

Strategy No. 21 — Dialogue Debate

Why?

The dialogue debate provides a structure discussion of a controversial topic. More than a regular debate, the dialogue debate encourages students to examine many arguments from each point of view.

How?

The teacher should select four students or four teams for each debate. After the students have had enough preparation time, the debaters should conduct their debate before the other members of the class who will have opportunities to question the debaters after the completion of two or more rounds. Round I is begun with a spokesperson from one side developing one argument. The teacher should listen and, when one point has clearly been made, the teacher should stop the speaker. At that time a spokesperson from the other side must pick up the first point presented, refute it to the best of his ability and continue to develop a new point in favor of his side's position. Once again the teacher should stop this second speaker as soon as the speaker has developed a new idea. The first side then must respond and develop a third idea. The same pattern should be followed with each round consisting of statements from each student or team. Depending upon the complexity of the topic and the amount of preparation, only two or more rounds may be needed. At the end of the last round the audience should be encouraged to ask questions and offer additional points. The debaters may ask for a vote from the audience to determine the winning side.

Strategy No. 22 — Structured Discussion

Why?

These techniques facilitate discussion by focusing attention on specific questions or issues and involving more students in a balanced examination of a topic or concept.

How?

Several variations of directed discussion may be used, including the following:

SERIAL STORY: Select a narrative involving one or more legal issues. Break the story into segments. Each segment should raise a legal point to be discussed or a decision to be made. Consider only one segment at a time. Conclude with an examination of the final conclusions in light of the discussion which preceded.

ROTATION DISCUSSION: To insure maximum participation in a discussion, code questions to be discussed. For example, number or letter each question and assign corresponding letters or numbers to students. The students who are assigned a particular letter or number will be the first to respond when their question is raised. This technique works well with the serial story.

DISCUSSION SHEETS OR CARDS: Introduce a topic or problem. The source may be a story, a film, a tape, etc. Divide the class into groups of 3 or 4. Hand each group a card or sheet with specific questions to be discussed. The questions may be the same, or each group may be given questions dealing with one aspect of the problem or situation. The groups should work toward consensus. Conclude with a report from each group. Allow time for minority dissents to be discussed. Try to reach a class consensus.

PROGRESSIVE LISTENING: This activity is designated to enhance discussion and improve listening skills. The group leader makes or presents a "devil's advocate" statement to the group and asks for a response. The speaker is free to agree or disagree so long as he gives a reason for his position. The discussion continues with a response by another group member, *but* before the speaker can respond he must summarize what the former speaker said to the former speaker's satisfaction. The discussion continues in this way. Speakers may volunteer or each person may be asked to respond (though anyone should be free to pass if he coooses). The class may be divided into groups for the activity if the group is large.

SPOTLIGHT: This strategy is a useful discussion tool as well as a listening skill builder. It allows each student to have the undivided attention of his partners, to serve as a listener and clarifier, and to be an observer of the discussion process.

Divide the class into groups of three. Have the students arrange their chairs in a circle. Assign each member of the trio a role as the responder, the clarifier, or the summarizer. Tell each student that during each round, he will play a role. Describe each role as follows:

The Responder: Listens to a statement by the teacher and has two minutes (or whatever time is appropriate) to respond without interruption.

The Clarifier: After listening to the responder, asks clarifying questions (approximately two minutes). The clarifier cannot interject his own thoughts at this time.

The Summarizer: Listens to both of his partners and at the conclusion of their discussion, gives feedback on the process involved by indicating whether they fulfilled their roles and by giving examples.

Strategy No. 23 — Quick Survey

Why?

This strategy allows the teacher and all class members to observe the range of attitudes within the class.

How?

Prearrange a distinct visual signal for each of five positions: strongly agree, agree, no opinion, disagree, strongly disagree. The teacher then makes a statement which requires an expression of opinion. The students are instructed to think about their answer and at a given signal to vote.

This strategy should be followed with open interviewing, Strategy No. 7, to allow students to elaborate on their positions.

Strategy No. 24 — Field Trip

Why?

To provide first-hand learning experiences which help students relate the classroom study to actual community models.

How?

Before planning any field experiences, the teacher should clearly understand the local school or district's rules and regulations regarding field trips. The building principal usually will have this information or can direct teachers to the proper source.

The field trip should be planned as an intergral part of the unit of study and may be successfully used at different times depending upon the teacher's purpose. For example, a field trip may be used to introduce a topic thereby stimulating interest in the proposed course of study. It may be used during the course of study to provide additional information or experiences not available through other sources. It can also serve as a final activity enabling students to compare the classroom experience to the reality of people and institutions in action. A successful field trip requires very careful planning. The teacher should discuss with the students the purpose of the field trip, the expected results, and what may be observed. In addition, the students should understand the mechanics of the field trip as well as appropriate dress and behavior.

Following the field trip, the teacher should plan questions and activities which relate the field experiences to the unit of study.

Strategy No. 25 — Resource Speaker

Why?

To give students opportunities for face to face contact with people who can give first-hand information about the subject under study.

How?

Before inviting any guest speakers, the teacher should fully understand the local school or district's policies regarding guest speakers. The building principal will usually have this information or can direct teachers to the proper source.

Ordinarily a guest speaker will be making some special effort to come to the classroom; therefore, the guest speaker should be extended special courtesy. For example: arrangements should be made for parking, someone to meet the speaker, guide the speaker to the room, and see that the speaker is escorted out of the building.

The use of the resource speaker is most successful if the teacher makes careful plans for the visit. Prior to the visit the person should be contacted and briefed. Briefing might include an explanation of the objectives for the visit, characteristics of the students, and how the topic has been treated thus far in the course of the study.

The teacher should discuss with the class the reasons for inviting the speaker, the kinds of information the speaker may be expected to bring, and the kinds of questions the students may wish to ask.

Following the visit the teacher should plan questions and activities which relate the information brought by the speaker to the unit of study.

Strategy No. 26 — Music, Poetry, and the Law

Why?

To encourage students to synthesize learning regarding a legal concept such as Separation of Powers.

How?

1. Divide the class into groups of 3-5. Give each group a sheet of paper containing ten words, a large sheet of paper, marking pens, and the following instructions.
   — You will be given a sheet of paper with 10 words on it. You are to use these 10 words in composing two poems, one about the unity of government and the other about the divisions found in government.
   — There is an additional instruction on your sheet that is to be incorporated in your poems. (either to praise, to mourn, to satirize, to pray for, or to petition)
   — Write poems on the big sheets.
   — Be prepared to give poems to group either in song, choral readings, or solo reading with "background."
2. Sample words:

Mr. President	legislature	illegal	Capitol Hill
lesser courts	equitable	reasonable	elect
jurisdiction	absolute	Nine Old Men	justice
unconstitutional	The Honorable, Mr. Chief Justice	appoint	balance
power	check	the White House	Burger

3. Encourage students to write original musical compositions or original lyrics for a familiar tune. If they choose to write a poem, suggest background music or sound to add drama to the presentation. The activity will be most successful if the teacher can set the stage for a full scale production.
4. Have each group present its original composition for the class and follow with a group discussion. The following types of questions are suggested:
   a. What was the song or poem about?
   b. What did the group have to say about the topic?
   c. What kinds of feelings were created? How was this accomplished?
   d. How did these impressions agree with what you, the creators, intended to convey?
   e. Do you agree or disagree with what the group had to say about its topic? Why?

Strategy No. 27 — Learning Stations

Why?

To provide an opportunity for students to participate in direct study in a structured learning environment. This type of activity has the added advantage of allowing students to move about the room freely while still providing a sense of direction. Learning Stations can be used to gather information during a unit or study or to synthesize learning at the conclusion of a unit of study. The activity may also be used as a test.

How?

1. Develop a series of specific tasks related to the topic being studied. Each task should be an independent activity so that students may proceed through the stations at random.
2. Have each student select a partner (groups of three may be used also).
3. Set up stations around the room with one task at each station.
4. Instruct each team to go to a vacant station and complete the specified activity.
5. After the completion of the activity, the team should move on to another station. If all stations are filled, the team members could use the time to reevaluate their solutions to the completed tasks.
6. At the conclusion of the activity, the class should discuss each station, allowing each team to report on its decision or solution. The types of questions to be asked will depend upon the nature of the learning experience.